



Received on	09	01	2024
Registered on	09	01	2024
Decided on	09	04	2026
Duration	<u>YY</u>	<u>MM</u>	<u>DD</u>
	02	02	03

IN THE MOTOR ACCIDENT CLAIMS TRIBUNAL (AUX.) &
2ND ADDITIONAL DISTRICT COURT, PALANPUR, AT-
BANASKANTHA

MAC PETITION NO. 15 OF 2024

Exhibit No.

Applicant:

- 1] **Dalabhai Vihabhai Rabari**
Aged about - 37 Years,
Occupation - At present none,
R/o. Rabarivas, Bhimpura, Bhordu,
Taluka : Tharad, District : Banaskantha
- Versus -

Opponents :

- 1] **Shrawan Kumar Malluram**
Res. Ward No.15 Chak, Vijaisinghpura, Bikaner,
Jhajoo, District : Rajasthan - 334302
(Owner of Trailer No.RJ-07-GD-4335)
- 2] **The New India Assurance Company Ltd.**
Address : H.K.Tower, Aburoad Highway,
Opposite Hanuman Tekri, Taluka : Palanpur,
District : Banaskantha
(Insurance Company of Trailer No.RJ-07-GD-4335)
- 3] **Legal Heirs of deceased Dharmabhai Rahabhai**

Rabari

- 1) **Rajuben Dharmabhai Rabari**
- 2) **Kiranbhai Dharmabhai Rabari**
- 3) **Alpeshbhai Dharmabhai Rabari**

All are R/o. Sanval, Taluka : Vav,
District : Banaskantha

(Owner of I-10 Car No.GJ-08-CG-1309)

- 4] **Magma General Insurance Company Ltd.**

Address : First Floor, Suncity House, Mithikhali,
Six Cross Road, Ahmedabad

(Insurance Company of I-10 Car No.GJ-08-CG-1309)

(Opponent Nos.3 & 4 joined as party in the present claim petition as per order passed below Exh.17)

Appearance:-

Ld. Advocate **Mr. D.D.Swami** for Applicant.

Ex-parte order passed against Opponent Nos.1 & 3.

Ld. Advocate **Mr. D.K.Thakor** for Opponent No.2.

Ld. Advocate **Mr. N.M.Joshi** for Opponent No.4.

Claim of Rs.10,00,000/- u/s. 166 of M.V.Act

J U D G M E N T

(Delivered on 9th April, 2026)

1. The applicant has filed this Motor Accident Claim Petition for the compensation of Rs.10,00,000/- under Section 166 of the Motor Vehicles Act, 1988, arises from the Motor vehicular accident which took place on 26.10.2023.

2. As per the case of the applicant, on dt.26.10.2023 present applicant along with other persons had visited Vatdau village for attending religious ceremony of Chehar Mata in I-10 Car bearing registration no.GJ-08-CG-1309 and after attending the same was returning back at around 11:30pm during the night hours and the said vehicle was being driven by one Dharmabhai and the car was heading towards Tharad and after exiting Vatdau village car of the deceased came at Miyal village and while the car was on the highway road and was heading towards Mesra from Miyal village, one trailer bearing registration no.RJ-07-GD-4335 which was coming from the side of Tharad and was being driven by its driver at an excessive amount of speed, rashly and negligently endangering human lives, dashed the I-10 car which was being driven by said Dharmabhai resultantly leading to the occurrence of the impugned accident. As a result of the impugned accident, applicant sustained very serious injuries in his chest, ribs and fracture on his left hand palm and nose for which he also underwent operation. The

impugned accident had occurred due to the sole negligence of the driver of the trailer.

3. The applicant submits in his application that he has incurred huge expenses behind treatment, medicines, transportation, attendance, special diet. The applicant has further stated that due to the accident he had suffered from pain, shock and suffering and also the loss of actual income and future income. So, he has stated that he is entitled to get compensation of Rs.10,00,000/- jointly and severally from the opponents.

4. On admission of petition, notices were issued to opponents upon which none has appeared for Opponent Nos.1 & 3 as a result of which ex-parte order has been passed against both the opponents by this tribunal. On the other hand, Ld. Advocate Mr. D.K.Thakor has appeared for Opponent No.2, insurance company of trailer and has submitted written statement vide **Exh.51**. The Opponent No.2 has denied almost all the contentions of the petition. The Opponent No.2 has also denied the facts of the

application relating to the age, income and expenses and also stated that the applicant should prove the facts by producing the cogent evidence. The opponent No.2 further contended that there is a breach of terms and conditions of the insurance policy as the driver of the trailer was not holding any valid and effective driving license to drive the vehicle and therefore present opponent does not stands any liability towards awarding compensation to the applicant. The opponent No.2 has taken all the legal defences available to it and has contended that the claim is liable to be dismissed with costs. Ld. Advocate Mr. N.M.Joshi has appeared for Opponent No.4, insurance company of I-10 car and has submitted written statement vide **Exh.54**. Further Learned Advocate Mr.N.M.Joshi has appeared for Opponent No.4 wherein opponent no.4 has denied almost all the contentions of the petition. The Opponent No.4 has also denied the facts of the application relating to the age, income and expenses and also stated that the applicant should prove the facts by producing the cogent

evidence. The opponent No.4 further contended that there is a breach of terms and conditions of the insurance policy as the driver of the I-10 car was not holding any valid and effective driving license to drive the vehicle and therefore present opponent does not stands any liability towards awarding compensation to the applicant. The opponent No.4 has taken all the legal defences available to it and has contended that the claim is liable to be dismissed with costs.

- 4.1.** Learned Advocate for the Opponent No.2 has also argued through written arguments vide **Exh.55** wherein Ld. Advocate has vehemently argued that impugned accident had not occurred due to the sole negligence of the driver of the trailer as from the FIR and from the panchnama it clearly appears that both the vehicles have dashed head to head, i.e. impugned accident is a head on collusion and therefore both the drivers of their vehicles are equally responsible for the occurrence of the impugned accident, i.e. 50-50% negligence shall be

considered for both the drivers as driver of the car was also negligent for driving the vehicle at an excessive amount of speed due to which the car dashed with the trailer and therefore to some extent the driver of the car is also 50% negligent for the occurrence of the impugned accident. It is further argued out that the driver of the car was not holding a valid and effective driving license to drive the vehicle and therefore there is breach of terms and conditions of insurance policy and therefore present opponent does not stands any liability towards awarding compensation to the applicant.

5. On above pleadings of the respective parties, following issues have been framed at **Ex.12** by this court for determination of this claim petition:

- (1) Whether the applicant prove that, he sustained serious injuries due to rash and negligent driving of driver of vehicle involved in accident?
- (2) Whether the applicant is entitled to get compensation? If yes, who is responsible to pay

compensation and to what extent?

(3) What order?

6. The finding of this Tribunal on the aforesaid issues is as under:

1. In affirmative.
2. As per final order.
3. As per final order.

7. The following oral and documentary evidences have been produced on record for deciding this claim petition:

Oral Evidence

Sr. No.	Particular	Exh.
1.	Affidavit of Applicant Dalabhai Vihabhai Rabari	15

Documentary Evidences

Sr. No.	Particular	Exh.
1.	Certified copy of Medicolegal Certificate of Krishna Hospital, Tharad.	25
2.	Cash memo, invoice and medical	26-47

	expense bills of various hospitals	
3.	Disability Certificate	36
4.	Copy of FIR	59
5.	Copy of Panchnama	60

8. After filing of closing pursis vide **Exh.61** by the Ld. Advocate for the applicant and vide **Exh.52** by the Ld. Advocate for the opponent no.2, heard learned Advocates for the parties. Ld. Advocate for the claimant has vehemently argued that, the opponent is liable to indemnify the loss occurred to the claimant.

REASONS FOR FINDING ON ISSUE No.1.

9. While deciding the point of negligence, it has to be born in mind that the negligence is required to be proved in claim petition U/s. 166 of the Act only on the touchstone of the preponderance of probability and not beyond doubt. Above referred ratio is laid down by Hon'ble Apex Court in the cases of **(1) Bimla Devi V/s. H.R.T.C. Reported in AIR 2009 SC 2819 and (2) Parmeshwari Devi V/s. Amir**

Chand, reported in 2011 (11) SCC 635.

9.1. In the affidavit of Examination-in-Chief (**Exh.15**), the claimant deposed that, on dt.26.10.2023 present applicant along with other persons had visited Vatdau village for attending religious ceremony of Chehar Mata in I-10 Car bearing registration no.GJ-08-CG-1309 and after attending the same was returning back at around 11:30pm during the night hours and the said vehicle was being driven by one Dharmabhai and the car was heading towards Tharad and after exiting Vatdau village car of the deceased came at Miyal village and while the car was on the highway road and was heading towards Mesra from Miyal village, one trailer bearing registration no.RJ-07-GD-4335 which was coming from the side of Tharad and was being driven by its driver at an excessive amount of speed, rashly and negligently endangering human lives, dashed the I-10 car which was being driven by said Dharmabhai resultantly leading to the occurrence of the impugned accident. As a result of

the impugned accident, applicant sustained very serious injuries in his chest, ribs and fracture on his left hand palm and nose for which he also underwent operation. The impugned accident had occurred due to the sole negligency of the driver of the trailer. Thereafter Ld.Advocate Mr. D.K.Thakor for the Opponent No.2, insurance company has cross-examined the applicant at length wherein applicant has indisputably narrated the entire facts supporting the claim petition and nothing adverse seems to be coming out from his cross-examination.

10. This Tribunal has gone through the materials on record. The perusal of the records shows that the opponents have not produced any witness to rebut the version of the claimant. Further the opponent no.2 has not produced the driver of the offending vehicle in the witness box to explain as to how the accident had occurred. Thus, the opponent no.2 has not produced the driver of the offending vehicle before the Tribunal who could have explained the

nature and manner of occurrence of the accident. Thus, in view of the judgment reported as **1986 ACJ 331 (Punjab & Haryana High Court)**, **2013 (3) TAC 17 (Karnataka High Court)**, **2007 ACJ 1723 (Madhya Pradesh High Court)** and **2010 ACJ 15 (Gujarat High Court)**, adverse inference is required to be drawn against the respondents in the present case. Further, both the side has not produced any eye witness, therefore, in this case the doctrine of *'Res Ipsa Loquitur'* is attracted. In **Pushpabai Parshottam Udeshi and others – versus – M/s. Ranjit Ginning and Pressing Co. Pvt. Ltd. And Another** reported as **AIR 1977 SC 1735**, the Hon'ble Apex Court has held in para 6 that;

“6. The normal rule is that it is for the plaintiff to prove negligence but as in some cases considerable hardship is caused to the plaintiff as the true cause of the accident is not known to him but is solely within the knowledge of the defendant who caused it, the plaintiff can prove the accident but cannot prove how it happened to establish negligence on the part of the defendant. This hardship is sought to be avoided by applying the principle of res ipsa loquitur. The general purport

of the words res ipsa loquitur is that the accident "speaks for itself" or tells its own story. There are cases in which the accident speaks for itself so that it is sufficient for the plaintiff to prove the accident and nothing more. It will then be for the defendant to establish that the accident happened due to some other cause than his own negligence....".

10.1. Considering the principal laid down on above judgement let us go through the oral and documentary evidence, it clearly transpires that the accident was occurred due to collision between the trailer and the I-10 car. Herein the present case, FIR of the said incident is produced at **Exh-59** and the same has been filed by complainant Kunvarsibhai Ramabhai Desai. It appears from the contents of the FIR, that complainant was in his home when he received a phone call that an accident had taken place on the Sanchor highway road near the border of Miyal village wherein the deceased and other persons have suffered very serious and grievous fatal injuries and they were taken to Civil Hospital, Tharad for primary treatment and the deceased had succumbed to the fatal injuries so he was

taken for P.M. and thereafter complainant got to know that while returning from religious ceremony at Vantdau village the I-10 car of the deceased got dashed by a speeding trailer resulting into the occurrence of the impugned accident in which the deceased died on the spot. The copy of panchnama is produced vide **Exh:60** and looking to the said panchnama, it clearly transpires that the accident had occurred on the Sanchor highway road near the border of Miyal village and I-10 car has been recovered from the spot of accident in heavily damaged condition as the bonnet, engine and other body parts of the car had damaged and broken badly, also tyre marks has been recovered from the spot of accident and broken pieces of body parts and glass have also been recovered from the spot of accident. However the facts of the panchnama are quite similar as of the FIR and no eye catching evidence has been found in the panchnama. It is required to be noted that neither of the opponents have brought the driver of the offending vehicle before the tribunal who can narrate the actual story behind the occurrence of the

impugned accident nor any eye witnesses are produced before this tribunal to testify the same which makes the fact relevant that impugned accident had occurred due to the negligent driving on the part of driver of the trailer. Further, except the statement of the complainant both the sides have not produced any eye witness, therefore, in this case the doctrine of '*Res Ipsa Loquitur*' is attracted.

10.2. Considering the principle laid down on above judgment and after going through the oral as well as documentary evidences produced on record, it appears that it was the first and foremost duty of the driver of the trailer to drive the vehicle at moderate speed and also observe the traffic rules as trailer is a very big and heavy vehicle in comparison to a car and as per the as ratio laid down in the case of *Daxaben Parsottambhai Dhami V/s Leruji Dinaji Bhati, Reported in 2015(3) GLR 1944* wherein it is held that; "*Driver of the heavy vehicle requires to take more care*", but herein the present case, the driver of the trailer has miserably failed to do so. If the driver of the trailer had

taken proper care and drove his vehicle at moderate speed, he could have avoided the accident but he could not do so, which resulted into occurrence of the accident.

10.3. Thus, in view of the above facts and circumstances on record, this Tribunal finds that involvement of vehicle and place of accident is duly proved. It is undisputed fact that present accident was occurred on the highway road. From evidence produced on record, it can certainly be said that, if the driver of the trailer had taken a little care and if he remained attentive while plying his vehicle on the road and by following rules of road traffic, he could have averted this accident. Thus, in view of the above discussion and keeping in view the nature of accident along with the complaint and panchnama, this tribunal deems fit that the driver of the offending vehicle tanker bearing no.RJ-07-GD-4335 and under these circumstances, *Issue No. 1 is answered accordingly "In the Affirmative"*.

REASONS FOR FINDING ON ISSUE NO. 2.

11. While deciding the issue it is incumbent upon the Tribunal to grant the just compensation.

11.1. In **Nagappa Vs. Gurudayalsingh 2003 ACJ 12 (SC)** the Honourable Apex Court held that the main guiding principle for determining the compensation is that it must be 'just' and 'reasonable'. The question relating to some of the relevant parameters in that regard further arose for consideration before the full bench of the Hon'ble Supreme Court in the case of **Rajesh Vs. Rajvirsingh** [2013 ACJ 1403(SC)]. In **Rajesh (Supra)** the Honourable Apex Court considering the law laid down in judgments of **Nagappa Vs Gurudayal Singh** [2003 ACJ 12 (SC)], **Ningamma Vs United India Insurance Company Ltd** [2009 ACJ 2020 (SC)], **Oriental India Insurance Company Limited Vs. Mohammed Nasir**, [2009 ACJ 2742 (SC)], **Sarla Verma Vs. Delhi Transport Corporation** [2009 ACJ 1298 (SC)], **Santosh Devi Vs. National Insurance Company Ltd** [2012 ACJ 1428 (SC)], **Arti Bezbaruah Vs. Deputy Director**

General Geological Survey of India, [2003 ACJ 680 (SC)],
General manager Kerela State Road Transport Corporation
Vs. Susamma Thomas, [1994 ACJ 1 (SC)] and Sarla Dixit
Vs. Balwant Yadav [1996 ACJ 581 (SC)] in para No. 19
held as:

"..it is the duty of the Tribunal to build on the rapport and award just, equitable, fair and reasonable compensation with reference to the settled principles of assessment on damages. Thus, on this ground also where held that the Tribunal/Court has a duty, irrespective of claims made in the application, if any, to properly award just, equitable, fair and reasonable compensation, if necessary, ignoring the claim made in the application for compensation."

11.2. In Divisional Controller, KSRTC v. Mahadeva Shetty
and Another reported as 2003(7) SCC 197, the Hon'ble
Supreme Court held that:-

"15. The Tribunal constituted under the Act as provided in Section 168 is required to make an award determining the amount of compensation which to it appears to be 'just'. It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. Bodily injury is nothing but a deprivation which entitles the claimant to damages.

The quantum of damages fixed should be in accordance to the injury. An injury may bring about many consequences like loss of earning capacity, loss of mental pleasure and many such consequential losses. A person becomes entitled to damages for the mental and physical loss, his or her life may have been shortened or that he or she cannot in joy life which has been curtailed because of physical handicap. The normal expectation of life is impaired. But at the same time it has to be borne in mind that the compensation is not expected to be a wind fall for the victim. Statutory provisions clearly indicate the compensation must be "just" and it cannot be a bonanza; not a source of profit but the same should not be a pittance. The Courts and Tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be "just" compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measures of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of "just" compensation which is the pivotal consideration. Though by use of the expression "which appears to it to be just" a side discretion is vested on the Tribunal, the determination has to be rational, to be done by a judicious approach and not the

outcome of whims, wild guesses and arbitrariness. The expression "just" denotes equitability, fairness and reasonableness, and non-arbitrary. If it is not so it cannot be just."

11.3. In Helen C. Rebello & Ors. v. Maharashtra State Road Transport Corpn. & Another reported as 2003 ACJ 1775, the Hon'ble Supreme Court held that:-

"32. The word 'just', as its nomenclature, denotes equitability, fairness and reasonableness having large peripheral field. The largeness is, of course, not arbitrary; it is restricted by the conscience which is fair, reasonable and equitable, if it exceeds; it is termed as unfair, unreasonable, inequitable, not just".

11.4. Thus, to award the just, fair, reasonable and equitable compensation, the Tribunal has to determine the following variables to calculate the future loss of income.

A.	Age of the claimant and multiplier.
B.	Income of the claimant
C.	Percentage of permanent disability and its effect on future income.
D.	Calculation of future loss of income.

A. AGE OF THE CLAIMANT AND MULTIPLIER:

12. As per the memo of parties, the age of the applicant was around 37 years at the time of filing the petition. In the claim Petition, the applicant has stated that he was 37 years old at the time of accident and in support of his version applicant has produced his Aadhar and PAN Card, perusing which it appears that the D.O.B. of the applicant is 01/01/1986 and the impugned accident took place on dt.26/10/2023, so after calculation it appears that applicant was 37 years 9 months 25 days at the time of accident, i.e. 38 years. Thus, the Tribunal is of the considered view that the age of the applicant be ascertained as **38** years at the time of accident for the purpose of ascertaining the multiplier for calculation of future loss of income. In *Smt Sarla Verma & Ors. – versus- Delhi Transport Corporation & Another, reported as AIR 2009 SC 3014*, the Hon'ble Supreme Court of India in para 42 held as,

“42. We therefore hold that the multiplier to be used should be as mentioned in column (4) of the Table

above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years.”

12.1. The Hon’ble Apex Court in **Reshma Kumari and others Vs. Madan Mohan and another (Civil Appeal No. 4646 of 2009 and 4647 of 2009 decided on 2nd April, 2013 by the full bench)**, issued the directions in paragraph No.40 of the Judgment to follow the judgment of the **Sarla Verma** (supra). The Hon’ble Court further directed that the directions issued in this judgment shall also applicable to all pending petitions.

12.2. Further, recently in the case of *National Insurance Company -Versus- Pranay Sethi and oth., 2017(16) SCC 680*, Hon'ble full Bench of the Apex Court directed to follow the multiplier fixed in Sarla Verma case. Relevant para of above judgment is reproduce hereunder for ready reference.

44. As far as the multiplier is concerned, the claims tribunal and the Courts shall be guided by Step 2 that finds place in paragraph 19 of Sarla Verma read with paragraph 42 of the said judgment. For the sake of completeness, paragraph 42 is extracted below :-

“42. We therefore hold that the multiplier to be used should be as mentioned in Column (4) of the table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30

years, M- 16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years.”

45. In Reshma Kumari, the aforesaid has been approved by stating, thus:-

“It is high time that we move to a standard method of selection of multiplier, income for future prospects and deduction for personal and living expenses. The courts in some of the overseas jurisdictions have made this advance. It is for these reasons, we think we must approve the Table in Sarla Verma for the selection of multiplier in claim applications made under [Section 166](#) in the cases of death. We do accordingly. If for the selection of multiplier, Column (4) of the Table in Sarla Verma is

followed, there is no likelihood of the claimants who have chosen to apply under [Section 166](#) being awarded lesser amount on proof of negligence on the part of the driver of the motor vehicle than those who prefer to apply under [Section 163-A](#). As regards the cases where the age of the victim happens to be up to 15 years, we are of the considered opinion that in such cases irrespective of [Section 163-A](#) or [Section 166](#) under which the claim for compensation has been made, multiplier of 15 and the assessment as indicated in the Second Schedule subject to correction as pointed out in Column (6) of the Table in Sarla Verma should be followed."

47. In our considered opinion, if the same is followed, it shall subserve the cause of justice and the unnecessary contest before the tribunals and the courts would be avoided."

12.3. Since the age of the petitioner assessed as years 37 years at the time of the accident thus naturally the age is 38 years at present hence in view of the aforesaid judgment of the Honorable Supreme Court the petitioner is entitled to multiplier of 15 for the calculation of future loss of income.

B. INCOME OF PETITIONER:

13. In the claim petition, the claimant has stated that, at the time of the accident, he was 38 years old and was earning Rs.15,000/- per month by doing agricultural work but in support of his version applicant has not produced a single documentary evidence to establish his income from agricultural work and under such circumstances, this tribunal is left with no other alternative than to consider the income of the applicant on notional basis. It is required to be noted that the impugned accident occurred in the year 2023 and applicant was 38 years of age at the time of accident, therefore, considering basic wage rates and social background of the original injured-claimant, it will be just and proper to consider Rs.10,000/- monthly income of the

claimant. Therefore, original injured-claimant's per month notional income is required to be considered as **Rs.10,000/-** at the time of accident.

C. PERCENTAGE OF PERMANENT DISABILITY AND ITS EFFECT ON FUTURE INCOME:

14. The medical records show that the claimant has received primary treatment at Krishna Hospital, Tharad and in view of the same applicant has produced the Medicolegal Certificate produced vide **Exh.25**. The applicant has produced Disability Certificate issued from Tathya Orthopedic Hospital at **Exh.36** which shows that applicant is having permanent partial disability of **23.44%**. Ld. Advocate for the opponent no.2 has agreed to consider the disability of 10% as body as a whole upon which the present applicant has shown no objection. Therefore, as per the mutual consent amongst both the parties on the basis of disability certificate produced on record this tribunal holds the permanent disability of the body as a whole of the applicant by **10%**.

D. FUTURE LOSS OF INCOME:

15. In the light of the judgment of **Raj Kumar –versus – Ajay Kumar, 2010(12) SCALE 265** and the facts and circumstances of the present case at the time of the accident the claimant was 38 years old and his monthly income has been assessed at Rs.10,000 per month at the time of the accident. Therefore, in my considered view, it would be fair, reasonable and equitable to award a sum of **Rs.1,80,000/-** i.e. **(Rs.10,000 (monthly income) X 12(months) X 15(multiplier) x 10%(disability) = Rs.1,80,000/-)** under the head of future loss of income.

E. MEDICAL EXPENSES:

16. Ld. Advocate for the applicant submitted that the applicant had to spend a huge amount on his medical treatment. He further submitted that the petitioner has placed on records, the medical bills at **Exh.26-47(Colly.)** worth **Rs.1,26,522/-** upon which neither of the opponents have raised any objection and therefore present applicant will be entitled for medical bills only of **Rs.1,26,522/-**.

F. SPECIAL DIET, TRANSPORTATION AND ATTENDANCE CHARGES.

17. Ld. Advocate for the claimant seeking compensation under the head of attendant charges, special diet and transportation. On the other hand, Ld. Advocate for the Opponent No.2 submitted that reasonable amount for attendant charges, special diet and transportation charges may be awarded to the applicant I have considered the rival contentions of the parties and perused the records. As discussed herein above that the claimant sustained grievous injuries in the accident and he has sustained in total 10% permanent disablement body as whole and thus, considering the nature of injuries period of treatment and follow up treatment and age of claimant, it would be fair reasonable and equitable to award a sum of **Rs.5,000/-** to the claimant under the head of Special Diet and Transportation and attendant charges.

G. ACTUAL LOSS OF INCOME

18. As discussed herein above, the claimant sustained serious

injuries in the accident and in support of the same applicant has produced the disability certificate in which the opposite side has agreed to 10% of permanent disablement on the body as a whole and he has also undergone for the medical treatment for the injuries sustained in the accident and during the medical treatment, the applicant might not have attend his work and/or office and he might have taken rest unless and until the recovery. In the case on hand it seems from the disability certificate produced vide Exh.36, it appears that the applicant must have been admitted for getting his disability checked which he has incurred from the impugned accident. Hence, this Tribunal assessed that patient must be treated as a indoor patient and considering the nature of injuries, period of treatment and follow up treatment, age of claimant it would be fair reasonable and equitable to award the actual loss for a period of 1 month, therefore, a Sum of **Rs.10,000/-** ($10,000 * 1 = 10,000/-$) to the claimant under the head of Actual Loss of Income.

H. PAIN SHOCK & SUFFERING:

19. In the present case, the claimant sustained serious injuries in the accident and he sustained a total 10% permanent disablement body as a whole. Thus, considering the nature of injuries, period of treatment and follow up treatment, it would be fair reasonable and equitable to award a sum of **Rs.15,000/-** to the petitioner under the head Pain Shock & Sufferings.

20. Thus the applicant is entitled for the following compensation.

Sr. No.	Particulars	Amount
1.	Future Loss of Income	Rs.1,80,000/-
2.	Medical Expenses	Rs.1,26,522/-
3.	Special Diet, Transportation and Attendance Charges	Rs. 5,000/-
4.	Actual Loss of Income	Rs.12,000/-
5.	Pain shock and Suffering	Rs.15,000/-
*	Total	Rs.3,38,522/-

20.1. Thus, the claimant is entitled to get a sum of **Rs.3,38,522/-**

as compensation.

LIABILITY TO PAY THE AWARDED AMOUNT:

21. So far as liability to pay compensation to the applicants is concerned, as discussed above impugned accident had occurred due to the sole negligence of the driver of the offending vehicle trailer bearing no.RJ-07-GD-4335 which was under the ownership of Opponent No.1, which is evident from Certificate of Registration produced vide **Mark 5/5** and therefore Opponent No.1 cannot escape from the liability of paying compensation to the applicant.

21.1. On the other Ld. Advocate for the Opponent No.2, insurance company of trailer has raised a dispute that the driver of the trailer was not holding a valid and effective driving license to drive the vehicle and therefore there is breach of condition of policy and so opponent no.2 insurance company does not stands liable to pay compensation to the applicant. Now, at this juncture perusing the copy of insurance policy produced vide

Mark 5/4 it appears that date of validity of the insurance policy is from 10/12/2022 to 09/12/2023 whereas the impugned accident took place on dt.26/10/2023 which means said insurance policy was in force and was active on the day of accident, on the other hand as per the principles laid down in the decision of **National Insurance Co. Ltd vs Swaran Singh & Ors -AIR 2004 HON'BLE SUPREME COURT 1531** which is required to be noted : -

“(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 license 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 license 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."

21.2. Thus as per the decision of the Hon'ble Apex Court in case of **Swaran Singh (supra)**, mere breach of condition on account of not holding valid license is not sufficient for the insurance to avoid its liability. The Insurance Company is further required to prove that such breach was the fundamental cause in causing the accident. In the present case, there is no evidence on record to show that the driver of trailer was not knowing to drive the trailer and he was totally unknown to the mechanism as well as driving of the trailer. Driving is a skill and driving generally is not dependent on the license. No doubt it is true that in India a person is supposed to drive the vehicle only if he attains the license but so far as the principle of basic fundamental breach is concerned, it is upon the opponent insurance company to prove that the driver was unknown to driving, he was totally ignorant

about the mechanism due to his inexperience or skill of the driving the accident has occurred then and there only the fundamental breach can be established. Also Ld. Advocate for the insurance company has also not examined the officer of RTO to justify the fact that the driver of the trailer was not holding a valid and effective driving license nor the Legal Officer of the insurance company has been examined before this tribunal to establish the fact on record that due to non-holding of driving license by the driver of the trailer, there is a breach in the terms and conditions of insurance policy but herein it is required to be noted that the judgment and direction passed by the Hon'ble Apex Court in case of **Swaran Singh (Supra)** has not yet been set aside and is still in force, even if it is believed that the driver of the trailer was not holding valid driving license, yet, in absence of proof that such breach was fundamental cause of the accident, the Opponent No. 2 insurance company cannot be exonerated. Thus, both the Opponents are held liable to pay compensation to the

applicants jointly & severally and the **Opponent Nos.3/1 to 3/3 & 4** being the owner and insurance company of I-10 car is hereby exonerated from the present claim petition.

INTEREST ON AWARDED AMOUNT:

22. I have considered the rival contentions of the learned Counsels for the parties and perused the records. Reference to the ratio laid down by the Hon'ble Apex Court is required to consider. In **Abati Bezbaruah v. Dy. Director General, Geological Survey of India and Another [(2003) 3 SCC 148]**, the Hon'ble Supreme Court has 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.”

- 22.1. Further, the Hon'ble Supreme Court of India in the case

of **M.C.D. - versus – Association of Victim of Uphaar Tragedy**, reported as 2012 ACJ 48(SC), the Hon'ble Apex Court awarded 9% interest. Thus, having regards to the facts and circumstances of the case, in the light of the judgments of **Abati Bezbaruah** (supra), **Association of Victim of Uphaar Tragedy**(supra), it would be just and proper to award the simple interest at the rate of 9% p.a., accordingly, the applicant shall be entitled to get **simple interest at the rate of 9% p.a.** on the awarded amount of claim from the date of filing of claim petition till payment of awarded amount.

Accordingly, the applicant is entitled to recover the amount of **Rs.3,38,522/- (Rupees Three Lakhs Thirty Eighty Thousand Five Hundred Twenty Two only)** at the rate of 9.0% p.a. from the date of claim petition till realization from the opponents. Hence, I have decided the *issue No.2 in affirmative* and *following final order is passed in view of issue No.3 :-*

- O R D E R -

1. The present M.A.C.P. No.15 of 2024 is hereby allowed. The applicant is entitled to recover compensation of **Rs. 3,38,522/- (Rupees Three Lakhs Thirty Eight Thousand Five Hundred Twenty Two only)** along with interest @9.0% p.a. from the date of claim petition till its realization, with proportionate cost, from the **Opponents Nos.1 & 2 jointly and severally.**
2. **The claim petition against the Opponent Nos.3/1 to 3/3 & 4 are hereby dismissed.**
3. The Opponent Nos.1 & 2 are hereby directed to transfer awarded amount through RTGS / NEFT within 30 days from the date of receipt of this order.
4. Deficit Court Fee Stamp, if any, be recovered from the awarded amount and interim amount if paid be adjusted.

5. Out of the amount payable to the applicant, 70% amount shall be invested in any Nationalized Bank for a period of 5 years in FDR in the name of applicant with a condition that the applicant will not be entitled to borrow loan or create any encumbrance on the said deposit and the remaining 30% amount shall be paid to the applicant through RTGS / NEFT after due verification.
6. The applicant shall be entitled for periodical interest on the above Fixed Deposit.
7. **The applicant is directed to submit the following details within one week from today:-**
- 1) Name of the applicant with address.**
 - 2) Name of the Bank & Branch with IFSC Code, Account Number of the applicant.**
 - 3) First page of the bank passbook, which will compulsorily contain the photograph of the applicant, duly attested by the**

Bank concerned, should be made available.

4) Wherever the applicant is impleaded as respondent before the Claims Tribunal, his account details, as above, will have to be furnished.

8. The insurance company and transport corporations and such other entities shall deposit the amount through RTGS/NEFT in State Bank of India, Opposite Old Ganj Bazaar, Main Branch, Palanpur, Account Name:- MACT, District Court, Palanpur, Account No.40902081331, IFSC Code: SBIN0000443 and on such deposits being made, the insurance companies and transport corporations and such other entities shall submit a letter to the Registry of MACP Tribunal, Palanpur enclosing a copy of the said bank advice, in prescribed format as above, as per which the deposit was made to the

bank account of the Claims Tribunal, to enable the Claims Tribunal to keep tab on the deposits made and the MACPs for which they were made, which is a fundamental need for a smooth implementation. The payment advice for remittance of compensation is as under:-

PAYMENT ADVICE FOR REMITTANCE OF COMPENSATION From:

.....**Bank**
**To:**
**Court**

We confirm remittance of compensation as follows on instructions of

.....
(insurance company / transport corporation):-

- 1) MACP Number**
- 2) On the file of (Claims Tribunal Name)**
- 3) Place**

-
- 4) **Date of award**
 - 5) **Amount deposited**
 - 6) **Income Tax Deduction at Source, if any,
Unique Transaction Reference (UTR) No.**
9. **The insurance companies, transport corporations and such other entities making such deposit, shall also send a copy of the payment advice in the aforesaid Clause to the Claims Tribunal concerned and serve a copy of the same on the claimants or their counsel as the case may be.**
10. **Insofar as tax deduction at source is concerned, Form 16-A of the Income Tax Act should be provided to the Claimant / victim on whose behalf the deduction has been made so as to enable him to seek refund of tax deducted.**
11. **The opponent nos.1 & 2 shall bear their own cost as well as the cost of this claim petition of the**

applicant also.

12. Award be drawn accordingly.

Pronounced in the open Court today on this **9th** day of **April,**
2026.

Date :- 09-04-2026
Place :- Palanpur.

[Amitkumar J. Kanani]
Chairman,
MACT (Aux.),
Palanpur, At - Banaskantha
(Unique I.D. Code No.GJ00662)

// K.A. //