



Received on	05	02	2025
Registered on	05	02	2025
Decided on	09	04	2026
Duration	01	02	04
	<u>YY</u>	<u>MM</u>	<u>DD</u>

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

MAC PETITION NO. 121 OF 2025

Exhibit No.

Applicant:

Legal Heir of deceased Akashbhai Dharsibhai Valmiki

- 1] **Khemiben Dharsibhai Valmiki**
Aged about - 45 years,
Occupation - Household work,
- 2] **Miraben Ravjibhai Valmiki**
Aged about - 60 years,
Occupation - Retired,
Both are Main R/o. Krushnanagar Society,
Valmikivas, Taluka : Tharad, District : Banaskantha
At present R/o. Dhundhiyavadi, Taluka : Palanpur,
District : Banaskantha

- Versus -

Opponents :

- 1] **Mr. Kuldeep Singh S/o. Telu**
R/o. Chopra Patti Balerkha (39) Jind,
Narwana, District : Haryana - 126116
(Owner of Trailer No.HR-56-B-8631)

- 2] **The Oriental Insurance Company Ltd.**
Address : Opposite Indira Gandhi Bhawan,
Main Road, Taluka : Deesa,
District : Banaskantha
(Insurance Company of Trailer No.HR-56-B-8631)
- 3] **Bhangi Krishnabhai Hirabhai**
R/o. Darbargadh, Taluka : Tharad,
District : Banaskantha
(Owner of Motorcycle bearing Chasis No. MBLHW226R5H01257)
- 4] **Bajaj Allianz General Insurance Company Ltd.**
~~Address : 1st Floor, 11 Rajendra Estate Highway
Road, Mehsana, District : Mehsana
(Owner of Motorecycle bearing Chasis No. MBLHW226R5H01257)~~
(Deleted as per order passed below Exh.19)

Appearance:-

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

Ld. Advocate ***Mr. D.M.Patel*** for Opponent No.1.

Ld. Advocate ***Mr. B.S.Solanki*** for Opponent No.2.

Ex-parte order passed against Opponent No.3.

Claim of Rs.25,00,000/- u/s. 166 of M.V.Act

J U D G M E N T

(Delivered on 9th April, 2026)

1. The present applicants have filed this claim petition to get compensation of Rs.25,00,000/- in respect of death of deceased Akashbhai Dharsibhai Valmiki in vehicular accident which took place on 25.10.2024, under the

provision of Section 166 of the Motor Vehicle Act.

2. Coming to the factual aspect of the case of the applicants, on dt.25.10.2024 at around 02:30 pm during the noon hours Dashrathbhai Rameshbhai Valmiki was driving his motorcycle and was heading towards the temple of Mangrol Shenal Mata along with his wife, deceased Vimlaben Dashrathbhai Valmiki and his cousin Aakash and nephew Chetnaben and he was driving the motorcycle at a very moderate speed, abiding traffic laws and on the correct side of the road and when he had reached on Tharad-Sanchor highway road near CNG pump, one trailer bearing registration no.HR-56-B-8631 which being driven by its driver at an excessive amount of speed, rashly and negligently endangering human lives, dashed the said motorcycle from behind resultantly leading to the occurrence of the impugned accident. As a result of the impugned accident, deceased Akashbhai fell down from the motorcycle and he sustained very serious and grievous fatal injury on his head due to

which he died on the spot. The impugned accident has occurred due to the sole negligency of the driver of the trailer. Thus in order to compensate all their losses, present applicants have sought for compensation by filing this claim petition from all the opponents jointly & severally.

- 2.1** It is also the case of the applicants that the deceased Akashbhai Dharsibhai Valmiki had died in the said accident. The applicant submit that deceased had died on the spot due the serious and grievous fatal injuries on his head which is sustained out of the impugned accident. The applicants have further stated that due to said accident they have suffered much pain and shock and also the loss of actual income and also from the prospective income. So, they have stated that they are entitled to get compensation of Rs.25,00,000/- jointly and severally from the opponents.

- 3.** On admission of the petition, notices were issued upon

the opponents and on service of notice, Learned Advocate Mr. D.M.Patel has appeared for Opponent No.1 and has submitted written statement vide **Exh.31** wherein Opponent No.1 has denied all the allegations and averments leveled by the applicant and has further prayed to dismiss the claim petition with costs. On the other hand, Learned Advocate Mr. B.S.Solanki has appeared for Opponent No.2, insurance company of trailer and has filed written statement vide **Exh.14**. The Opponent No.2 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 has further submitted that due to the carelessness of the applicant himself the impugned accident took place as all of a sudden he came on the road with the motorcycle due to which the impugned accident took place and therefore impugned accident took place due to the self negligency of the applicant himself due to which the

impugned accident took place and the deceased had died. 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. Further after service of notice none has appeared for Opponent No.3 upon which ex-parte order has been passed against Opponent No.3.

4. Ld. Advocate for the Opponent No.2, insurance company of trailer has also argued through written arguments vide **Exh.45** wherein Ld Advocate has forcefully argued that the driver of the trailer was driving the vehicle at a very moderate speed abiding traffic laws and it was the applicant himself who all of a sudden came with the motorcycle on the middle of the road as a result of which the driver of the trailer failed to apply the brakes on time which resulted into the occurrence of the impugned accident. It is further argued that due to the negligent and careless driving by the driver of the motorcycle, i.e. the present applicant the impugned accident took place which resulted into the death of the deceased and

therefore Ld. Advocate has further argued to dismiss the claim petition with costs.

5. On above pleadings of the respective parties, following issues have been framed by this tribunal at **Exh.17**

-: I S S U E S :-

- (1) Whether the applicant/s proves that the deceased had died due to rash and negligent driving on part of driver/s of the vehicle/s involved in this accident ?
 - (2) Whether the applicant/s is/are entitled to compensation? If yes, from whom and what amount ?
 - (3) What order and award ?
6. My findings on the above issues are as under:
- (1) In the affirmative.
 - (2) In partly affirmative. As per final order.
 - (3) As per final order.

-: R E A S O N S :-

Issue No.1: Negligence

7. The applicants have produced the following oral and documentary evidence to prove their case.

Oral Evidence

Sr. No.	Particular	Exh.
1.	Affidavit of Applicant No.1 – Khemiben Dharsibhai Valmiki	21

Documentary Evidences

Sr. No.	Particular	Exh.
1.	Copy of FIR	23
2.	Copy of Panchnama	24
3.	Copy of Inquest Panchnama	25
4.	Copy of Post Mortem Report	26
5.	Copy of Voter ID Card of deceased	48

8. Further Opponent No.2, insurance company of trailer has submitted the following oral and documentary evidences which are as under:

Oral Evidence

Sr. No.	Particular	Exh.
1.	Oral examination of witness Rakesh Revjibhai Rathva, P.I., Tharad Police Station	36

Documentary Evidences

Sr. No.	Particular	Exh.
1.	Copy of driving license of Opponent No.1	37
2.	Copy of Permit of trailer from Transport Department, Haryana	38
3.	Copy of Certificate of Fitness from Government of Haryana	39
4.	Copy of driving license of driver of trailer	40
5.	Copy of Certificate of Registration of motorcycle	41
6.	Copy of Chargesheet	42

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. The Applicant No.1 has filed her affidavit in nature of examination-in-chief on oath at **Exh:21** wherein he has reiterated the facts of his pleading and has further deposed that on dt.25.10.2024 at around 02:30 pm during the noon hours Dashrathbhai Rameshbhai Valmiki was driving his motorcycle and was heading towards the temple of Mangrol Shenal Mata along with his wife, deceased Vimlaben Dashrathbhai Valmiki and his cousin Aakash and nephew Chetnaben and he was driving the motorcycle at a very moderate speed, abiding traffic laws and on the correct side of the road and when he had reached on Tharad-Sanchor highway road near CNG pump, one trailer bearing registration no.HR-56-B-8631 which being driven by its driver at an excessive amount

of speed, rashly and negligently endangering human lives, dashed the said motorcycle from behind resultantly leading to the occurrence of the impugned accident. As a result of the impugned accident, deceased Akashbhai fell down from the motorcycle and he sustained very serious and grievous fatal injury on his head due to which he died on the spot. The impugned accident has occurred due to the sole negligency of the driver of the trailer.. Further she has also been cross-examined by Ld. Advocate for the Opponent No.2, wherein applicant no.2 has indisputable narrated the entire facts supporting the claim petition wherein nothing adverse seems to be coming out from her cross-examination.

9.2. Looking to the FIR at **Exh.23** and Accident Site Panchnama at **Exh.24** prepared by police, it clearly transpires that this accident had occurred on the Tharad-Sanchor highway road.

9.3. Looking to the FIR produced vide **Exh.23**, it appears that the FIR has been lodged by Dashrathbhai Rameshbhai

Valmiki. It is further stated by him in the FIR that on dt.25.10.2024 at around 02:30 pm during the noon hours complainant/applicant was heading towards the temple of Mangrol Shenal Mata on motorcycle along with his wife, deceased Vimlaben Dashrathbhai Valmiki and his cousin Aakash and nephew Chetnaben and he was driving the motorcycle at a very moderate speed, abiding traffic laws and on the correct side of the road and when he had reached on Tharad-Sanchor highway road near CNG pump, one trailer bearing registration no.HR-56-B-8631 which being driven by its driver at an excessive amount of speed, rashly and negligently endangering human lives, dashed the said motorcycle from behind resultantly leading to the occurrence of the impugned accident. As a result of the impugned accident, deceased Valmikiben fell down from the motorcycle and her skull got crushed and smashed under the tyre of the trailer due to which she had sustained very serious and grievous fatal injuries and she died on the spot and out of the impugned accident applicant had also sustained very

serious injuries. The copy of panchnama is produced vide **Exh.24** and looking to the said panchnama, it clearly transpires that the accident had occurred on the Tharad-Sanchor highway road and dry blood stains have been recovered from the spot of accident. It also reveals from the panchnama that both the vehicles have been recovered from the spot of accident wherein the motorcycle in which the deceased was traveling has sustained heavy damages in its body and broken parts of the vehicle are scattered at the spot of accident. It is required to be noted here that neither of the opponents have examined the driver of the offending vehicle who can narrate the actual story behind the occurrence of the impugned accident nor any eye-witnesses has been brought before this tribunal to justify the same. 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....”.*

9.4. 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 the chargesheet produced vide **Exh.42** has been filed against the driver of the trailer and it is pertinent to note that chargesheet is always filed after thorough investigation and after recording the statement of the witnesses and filing of the chargesheet itself is pointing towards the sole negligency of the driver of the trailer and being a driver of a heavy vehicle, 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 bus is a very big and heavy vehicle and as per the as ratio led down in the case of *Daxaben Parsottambhai Dhani 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.

9.5 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. However, as per the above discussion it is also required to be noted that even though the driver of the trailer is at fault but it is required to be noted that from the record that there were four persons seated on the motorcycle which was being driven by its driver Dashrathbhai and at this point Dashrathbhai himself has violated the traffic laws and rules by carrying passengers more than the seating capacity of the motorcycle and therefore under such circumstances the driver of the motorcycle also stands liable to some extent and so this tribunal deems fit that the **negligence on the part of driver of the trailer is 80%** and on the part of the driver of motorcycle

negligence is of 20% and under these circumstances,
Issue No. 1 is answered accordingly "In Affirmative".

REASONS FOR FINDING ON ISSUE NO.2.

10. While deciding this issue, it is incumbent upon the Tribunal to grant the just, fair, reasonable and equitable compensation.

10.1 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 Honorable 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."

10.2. In Divisional Controller, KSRTC Vs. 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."

10.3. 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.** Thus, to award the just, fair, reasonable and equitable compensation, the Tribunal has to determine the following

variables to calculate the future loss of dependency in fatal case.

A.	Assessment of Age of the deceased and multiplier.
B.	Assessment of Income of deceased and future prospects of the deceased.
C.	Future Dependency and calculation of total loss of dependency Prospects of the deceased.

A. Assessment of Age of deceased and Multiplier

- 12.** The applicants have stated in the claim petition that at the time of accident the deceased was 20 years old and in support of the same, applicants has produced the Voter ID Card issued by the Election Commission of India of the deceased vide **Exh.48** perusing which it appears that the year of birth of the deceased is mentioned as dt.01/01/2004 whereas the impugned accident had occurred on dt.24/10/2024 so after calculation it appears that deceased was aged 20 years 9 months 23 days at the time of accident, i.e. deceased was 21 years of age at the time of accident. Thus, considering the above mentioned documentary evidence produced on record, it appears that

the age of the deceased was 21 years at the time of accident and therefore, this Tribunal comes to the conclusion that the deceased was **21 years** old at the time of accident for the purpose of multiplier and 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. Since the age of the deceased assessed as **21 years** at the time of the accident, thus in view of the above judgment of the Hon'ble Supreme Court the applicants are entitled to consider the multiplier of **18** for the calculation of future loss of income.

B. Assessment of Income of deceased and future Prospects of the deceased.

13. Ld. advocate for the applicants submitted that at the time

of accident, the deceased was **21 years** old and was healthy and stout without any disease or disablement and he was earning Rs.15,000/- per month by doing the work of cleaner but in support of the same applicants have not produced any authentic and genuine document in regards to source of income and therefore under such circumstances due to the absence of such crucial and important documentary evidence this tribunal cannot consider the actual income of the deceased because so far as the claim petition is concerned no doubt Tribunal should not ask for the strict proof as envisaged in the Indian Evidence Act, having said that Tribunal also requires some base or reliable evidence to assess the income for the year of accident. Tribunal can't rely on imaginary or hypothetical submissions. Thus, as the applicants have miserably failed to prove the income of the deceased this Tribunal has no other alternative than to consider the income of the deceased on notional basis. By considering the fact that the accident was occurred in the year 2024 and keeping in view the age and

occupation of the deceased, the income of the deceased and other relevant factors, this Tribunal is assessed income as **Rs.12,000/-** for calculation of future loss of income and it is just and proper.

Future Prospect:

14. I have taken into consideration the ratio laid down in the case of **Sarla Verma (Smt.) and others vs. Delhi Transport Corporation and Anr., 2009 ACJ 1298 (SC)**, Hon'ble Apex Court had held that :-

"in case of a self employed person, unless there are special and exceptional circumstances, the annual income at the time of death is to be taken into account."

- 14.1. A Coordinate Bench (bench of two Hon'ble Judges) in **Santosh Devi Vs. National Insurance Company Ltd. and others 2012(6) SCC 421** has taken a different view which is to the following effect:

"14. We find it extremely difficult to fathom any rationale for the

observation made in para 24 of the judgment in Sarla Verma case that where the deceased was self-employed or was on a fixed salary without provision for annual increment, etc., the courts will usually take only the actual income at the time of death and a departure from this rule should be made only in rare and exceptional cases involving special circumstances. In our view, it will be native to say that the wages or total emoluments/income of a person who is self-employed or who is employed on a fixed salary without provision for annual increment, etc., would remain the same throughout his life.”

14.2. The view taken in **Santosh Devi (supra)** has been reiterated on date 12/4/2013 (by a Bench of three Hon'ble Judges) in **Rajesh and Others vs. Rajbir singh and others reported as 2013(9)SCC 54** by holding as follows :

“8. Since, the Court in Santosh Devi case actually intended to follow the principle in the case of salaried persons as laid down in Sarla Verma case and to make it applicable also to the self-employed and persons on fixed wages, it is clarified that the increase in the case of those groups is not 30% always; it will also have a reference to the age. In other words, in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years.

9. In Sarla Verma case, it has been stated that in the case of those above 50 years, there shall be no addition. Having regard to the fact that in the case of those self-employed or on fixed wages, where there is normally no age

of superannuation, we are of the view that it will only be just and equitable to provide an addition of 15% in the case where the victim is between the age group of 50 to 60 years so as to make the compensation just, equitable, fair and reasonable. There shall normally be no addition thereafter.”

14.3. In Reshma Kumari and others vs. Madam Mohan and Another 2009(3)SCC 422, a bench of two Hon'ble judges of Hon'ble Apex Court while considering the following questions took the view that the issue(s) needed resolution by a larger Bench;

"(1) xxxxxxxxx

(2) Whether for determination of the multiplicand, the Act provides for any criterion, particularly as regards determination of future prospects ?”

14.4. Answering the above reference on date 02/04/2013 a bench of three Hon'ble Judges of Hon'ble Apex Court in Reshma Kumari and Ors. vs. Madam Mohan and Anr., 2013(9) SCC 65 reiterated the view taken in Sarla Verma

(supra) to the effect that:-

"in respect of a person who was on a fixed salary without provision for annual increments or who was self-employed the actual income at the time of death should be taken into account for determining the loss of income unless there are extraordinary and exceptional circumstances."

14.5. Due to such an eventuality and some contradictory opinion laid down in above two judgments i.e in the case of Rajesh v/s Rajbir decided on 12/4/13 by bench of 3 Hon'ble judges of Apex court and in the case of Rashma Kumari decided on 2/4/13 by bench of 3 Hon'ble judges of Apex court, The bench of two Hon'ble judges of Apex court in case of National I.C. Ltd. v/s pushpa & oth. reported as 2015(9) sc 166 has referred the issue to the full bench of Hon'ble Apex Court. It has also been taken note in the last para of Pushpa's judgment, that the case of Reshma Kumari was not put in notice before the bench of Hon'ble Apex Court

during the hearing in the case of Rajesh v/s Rajbir.

16.6. Thereafter, the Hon'ble Apex Court on 29/01/2014 by bench of three Hon'ble Judges in the case of *Sanjay Verma v/s Haryana road transport reported as 2014(3) SCC 210*, after considering the judgment of Sarla Verma(supra), Rajesh v/s rajbir (supra), Santosh Devi (supra) and Reshma Kumari (supra) held that

'even though the deceased was self employed, he is also entitle for addition to income for future prospect.'

16.7. The Law laid down in case of Rajesh V/s. Rajbirsing (Supra) has been consistently and uninterruptedly continues it's application in all subsequent judgments. Few of them are:-

- (1) *Kanhsingh V/s. Tukaram, 2015,366;*
- (2) *Kalpanaraj V/s. Tamil Nadu State Transport Corpn., 2015 SCC, 764;*
- (3) *Chanderi Devi V/s. Jaspal Singh, 2015(4)SC 74;*
- (4) *Asha Verman V/s. Maharaj Singh, 2014(4)Scale 329;*
- (5) *Shashikala V/s. Gangalakshamma, 2015(9)SCC 150;*

14.8. Due to such an eventuality and some perceiving cleavage of opinion between above two judgments i.e in the case of *Rajesh v/s Rajbir* decided on 12/4/13 by bench of 3 Hon'ble judges of Apex Court and in the case of *Rashma Kumari* decided on 2/4/13 by bench of 3 Hon'ble judges of Apex court, The bench of Hon'ble 2 judges of Apex court in case of **National I.C. Ltd. v/s Pushpa & oth.** reported as 2015(9) SC 166 thought it appropriate to refer the matter to a larger bench for an authoritative pronouncement. It has also been taken note in the last para of Pushpa's judgment, that the case of Rashma Kumari was not put in notice before the bench of Apex court during the hearing of the case Rajesh v/s Rajbir. In that pursuance the Pushapa's case (supra) and other matters were referred to Larger bench and the above issue is settled by the bench of 5 hon'ble Judges of Apex court in the case of *National Ins. Co. -Versus- Pranay Sethi and oth., reported as 2017(16) SCC 680,* in which Hon'ble Apex court has elaborately discussed the issue and concluded to allowed addition in salary even if the deceased is self-employed or on a fix salary. Para 61 of

the above judgment is reproduce herein below verbatim for the ready reference.

"61. In view of the aforesaid analysis, we proceed to record our conclusions:-

(i) The two-Judge Bench in Santosh Devi should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in Sarla Verma, a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate Bench.

(ii) As Rajesh has not taken note of the decision in Reshma Kumari, which was delivered at earlier point of time, the decision in Rajesh is not a binding precedent.

(iii) While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The

addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

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

(v) For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paragraphs 30 to 32 of Sarla Verma which we have reproduced herein before.

(vi) The selection of multiplier shall be as indicated in the Table in Sarla Verma read with paragraph 42 of that judgment.

(vii) The age of the deceased should be the basis for applying the multiplier.

(viii) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs.40,000/- & Rs.15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.

14.9. Thus in the light of the aforesaid judgments, since the deceased was **21 years** of age at the time of the accident and she was self-employed, therefore, she is entitled for **40%** addition to income for the future prospects. Now the monthly income of the deceased was assessed as Rs.16,800/- P.M. Therefore, after considering the future prospectus it is assessed as **Rs.16,800/- p.m.**
[Rs.12,000/- p.m. + 40% (Rs.4,800/-) = Rs.16,800/-

p.m.] for the calculation of the loss of dependency.

C. Future Dependency and calculation of total loss of Dependency of the deceased.

15. The Learned Counsels for the parties submitted in their respective submissions that the deceased has left behind present applicant as dependent, therefore personal expenses from monthly income of the deceased may be deducted.

15.1. For calculating loss of dependency, the applicant ought to have prove that the present applicants are the dependents of the deceased. And to decide aspect of deduction for personal living expenses ratio laid down in the case of **National Insurance Company -Versus- Pranay Sethi and oth., 2017(16) SCC 680**, is necessary to refer.

42. In our view, the standards fixed by this Court in Sarla Verma on the aspect of deduction for personal living expenses in paras 30,31 & 32 must ordinarily be followed unless a case for

departure in the circumstances noted in the preceding paragraph is made out.”

15.2. For the ready reference para no 30 to 32 of Sarla Verma (Smt.) and Ors vs. Delhi Transport Corporation and Another, reported as 2009 ACJ 1298 SC),is reproduce hereunder verbatim.

“30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra, the general practice is to apply standardized deductions. Having considered several subsequent decisions of this (2003)3 SLR (R) 601 Court, we are of the view that where the deceased was married, deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth

(1/5th) where the number of dependent family members exceeds six.

31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependent and the mother alone will be considered as a dependent. In absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and earning, or married, or be dependent on father.

32. *Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependent, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where the family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third.*”

15.3. Thus, on above discussion it is incumbent upon this Tribunal to follow the judgment of Sarla verma (*supra*) on aspect of deduction for personal and living expenses as per the direction given by Hon'ble Apex court in case of Pranay Sethi (*supra*). In the present claim petition deceased was unmarried and he was bachelor because present applicant no.1 is the mother of the deceased and applicant

no.2 is the grandmother of the deceased and except them no other family members are joined in the present claim petition which establishes the fact that deceased was a bachelor at the time of accident, hence in view of the case of Pranay Sethi (Supra) 1/2nd amount be deducted from the assessed income of the deceased as personal and living expenses. Thus, loss of dependency is calculated as under:

1.	Annual income of deceased with Annual addition to income for future prospect:- (Rs.16,800/- x 12 months)	Rs.2,01,600/-
2.	Annual amount of personal expenses incurred by the deceased in his own maintenance:- (Rs.2,01,600/- x 1/2 nd)	Rs.1,00,800/-
3.	Annual Loss of Dependency:- (Rs. 2,01,600 - Rs.1,00,800/-)	Rs.1,00,800/-
4.	Total Loss of dependency:- Rs.1,00,800/-x 18 (multiplier)	<u>Rs.18,14,400/-</u>

Conventional Heads:

16. The Learned Counsel for the petitioners orally submitted

that as the deceased was 21 years of age at the time of accident hence the petitioner should get maximum amount on the conventional heads and prayed to grant the expenses of Rs.70,000/- for the funeral, Loss to estate, loss of enjoyment of life, loss of consortium, loss of love, etc. On the other hand Ld. Advocate for the I.C. has strongly opposed that contention and emphasized that the consortium should be given to the spouse only.

17. Before dealing with the rival contention, at this juncture, ratio laid down by the constitutional bench of the Hon'ble Apex Court in the case of The *National Insurance Company -Versus- Pranay Sethi and oth., reported as 2017(16) SCC 680,* in which Hon'ble Apex court has elaborately discussed the issue and concluded in para 59.8. for the uniformity. According to guideline rendered in above para this tribunal is awarded a sum of Rs.15,000/- under the head of 'funeral expenses', Rs.40,000/- under the head of loss of consortium and RS.15,000/- under the head of loss of estate.

17.1. Thus, in view of the ratio of the aforesaid judgments and discussion a sum of **Rs.70,000/-** supposed to be awarded under conventional heads. Now the question arise to be considered is with regard to award of compensation to the claimant under the loss of consortium. The question is only the wife who is entitled for the consortium or the consortium can be awarded to the children and parents also. Above question is not in *res integra* as in the case of **Megma Gen. Ins. Co. Ltd. Vs Nanuram @ Chuhruram & Ors. Reported in (2018) 18 SCC page No.130.** Hon'ble Apex Court interpreted consortium to be compendious which encompasses spousal consortium, parental consortium as well as filial consortium. 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 relation with the deceased spouse. Further, recently a three judges bench of Hon'ble Apex Court in the case of **United India Ins. Co. vs. Satindar Kaur @ Satvinder Kaur, reported in (2020) SCC Online**

410 had reaffirmed the view of two judges bench in *Megma Gen. Ins. Co. Ltd. (supra)*. Thus, in *Satindar Kaur's Case (supra)*, Hon'ble Apex Court has approved the comprehensive interpretation given to the expression 'consortium' to include spousal consortium, parental consortium, as well as filial consortium. Ld. Advocate of I.C. again resisted the contention of the consortium and argued that the case law of *Sangeeta Arya (supra)* (which was relied by the I.C.) was delivered later to the case of *Megma Gen. Ins. Co.(supra)*. Ld. Advocate has emphasized that the case of *Sangeeta Arya (supra)* should be believed as it is a new case law. The case of *Satendar Kaur @ Satvinder Kaur (supra)* was delivered shortly after the judgment of *Sangeeta Arya (supra)* and specifically laid down that both spousal and parental consortium are payable. Further, recently division bench of the Hon'ble Apex Court in the case of *The New India Ins. Co. Vs Somvati and Ors., in Civil Appeal No.3093 of 2020 (arising out of SLP (C) No.23478 of 2019)* had reaffirmed the view of *Satendar Kaur @ Satvinder Kaur (supra)* by

referring the para no.53 to 65. The relevant Para No.65 of Satendar Case referred in the Smt. Somvati Case is reproduced hereunder for the ready reference.

“65. The Tribunals and High Courts are directed to award compensation for loss of consortium, which is a legitimate conventional head. There is no justification to award compensation towards loss of love and affection as a separate head.”

17.2. Further it is required to note here that on above case, the case of *Sangeeta Arya (supra)* has been discussed at length and Hon'ble Apex Court in paragraph no.41 has laid down that "no ratio from the Sangeet Arya judgment be deciphered from the judgment of Sangeeta Arya that the consortium is only triable as a spousal consortium and consortium is not triable to children and parents." So far as the case law of *Bhagatsingh Rawat (supra)* is concerned, the strength of the bench is of two Hon'ble Judges wherein bench of three Hon'ble Judges of the Hon'ble Supreme Court in *Somvati (supra)* has discussed issue at length and helped that consortium also include the parental

consortium as well as filial consortium. So the case law relied by the Ld. Advocate for the insurance company is not helpful to them. Thus, a three judge bench of the Hon'ble Supreme Court approved the comprehensive interpretation given to the expression consortium to include spousal consortium, parental consortium as well as filial consortium. In view of the above discussions, in case where parents lost their child, the parents are entitled to be awarded loss of consortium under the head of Filial Consortium similarly, where children lost their parents, the children are entitled to be awarded loss of consortium under the head of Parental Consortium. Further, by considering the above case laws, child is entitled for the Parental Consortium. The question arose is whether the adult or married child are entitled for the Parental Consortium? By considering the above judgments the age of the child or the marital status has not been discussed for the Parental Consortium. Having said that the Filial Consortium is discussed in length and in that the parents have right to get filial consortium for the

death of the child, wherein it was clarified that the child means where the child is minor or unmarried. Thus this tribunal deems fit to take help of the interpretation of the Hon'ble Apex Court regarding age of child considered in filial and this tribunal held that age of the child must be minor to get the parental consortium considering the just and fair compensation. So, in the interest of justice and for fair compensation this Tribunal deems fit to consider that the child who is minor is entitled to get parental consortium as interpreted in Filial Consortium by the Hon'ble Apex Court. On above comprehensive interpretation by the Hon'ble Apex Court for the term consortium, let us now go through the fact of the case on hand. So, in the present case on hand applicants are neither entitled for filial consortium nor entitled for parental consortium. As per the record, applicants are the mother and grandmother of the deceased was major and therefore they shall not be entitled for filial consortium.

19.3. Further, recently Hon'ble Supreme Court in case of

Rashmita Biswal and Others vs. National Insurance Co. in Civil Application No.7549/2021 arising out of SLP © No.23177 of 2018 dated 8/12/2021 has enhanced the conventional heads with 10% by referring the judgment of *Pranay Sethi (supra)*. The relevant para No.16 of the judgment has reproduced hereunder for the ready reference.

16. In Pranay Sethi, this Court has awarded a total sum of Rs.70,000/- under conventional heads, namely, loss of estate, loss of consortium and funeral expenses. The said Judgment of the Constitution Bench was pronounced in the year 2017. Therefore, the claimants are entitled to 10% enhancement. Rs.16,500/- is awarded towards loss of estate and conventional expenses and Rs.44,000/- is awarded towards spousal consortium.

19.4. Thus by considering the above case law the Hon'ble Supreme Court has awarded the 10% addition in

conventional heads as per the law laid down in the judgment of Pranay Shetty. Further by going through the paragraph no.59.8 of the judgment of *Pranay Shetty* it is clearly directed by Hon'ble Apex Court that the amount of conventional heads should be enhanced at the rate of 10% in every three years. So far as the judgment of Pranay Shetty is concerned, it was declared on dt.31/10/2017 so on 31/10/2023, six years has been completed so the applicants are entitled for 20% addition in the conventional heads fixed in the judgment of Pranay Shetty.

20. Thus, claimant is entitled to the following amount of the compensation under the different heads.

Sr. No.	Particulars	Amount
1.	Future Loss of dependency	Rs.18,14,400/-
2.	Funeral Expense (20% enhanced)	19,800/-
3.	Loss of Estate (20% enhanced)	19,800/-
	Total Compensation	Rs.18,54,000/-

21. Thus, the claimants are entitled to get a sum of **Rs.18,54,000/-** as compensation.

::LIABILITY::

22. So far as liability to pay compensation to the applicant is concerned, as discussed above impugned accident had occurred due to the sole negligence of the driver of the trailer and the same was owned by Opponent No.1 which is evident from the Certificate of Registration produced vide **Exh.37** in which the name of the opponent no.1 is appearing on record and therefore opponent no.1 cannot escape from the liability of giving compensation to the applicants.

22.1. 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 4/6** it appears that date of validity of the insurance policy is from 29/09/2024 to 28/09/2025 whereas the impugned accident took place on dt.24/10/2024 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."

22.2. 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 inexpertise 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 No.3 being the owner of the motorcycle is hereby exonerated from the present claim petition.**

23. The Ld. Counsel of Opponent No.2 for the IC of trailer has strongly argued that the present case is of the case of contributory negligence and driver of the motorcycle has also contributed in the accident, hence, herein IC is not liable to pay the liability of the owner of the motorcycle.

23.1. I have give my thoughtful consideration to the rival submission. It is true that so far the applicant is concerned, present case is of composite negligence for them. As the applicant was the pillion rider and he has not at all contributed in the accident. At the same time the accident has occurred due to joint negligence of both the driver of respective vehicles. At this juncture as the case on hand is of a composite negligence hence before dealing with the above arguments arguments the ratio laid down by the Hon'ble Apex court in case of ***Khenyei v/s New India I.C(supra)*** which is of full bench of honorable supreme

court. In which Hon'ble apex court discussed the various case law on the question of liability of joint tortfeasor and formulated the following principles:

(i) "In the case of composite negligence plaintiff/claimant is entitled to sue both or any one of the joint tortfeasor and to recover the entire compensation as liability of joint tortfeasor is joint and several."

(ii) In the case of composite negligence, apportionment of compensation between two tortfeasors vis-a-vis the plaintiff/claimant is not permissible. He can recover at his option whole damages from any of them.

(iii) In case all the joint tortfeasor have been leaded and evidence is sufficient, it is open to the court/Tribunal to determine inter se extent of composite negligence of the drivers. However, determination of the extent of negligence between the joint tortfeasors is only for the purpose of their inter se liability so that one may recover the sum from the other after making whole of payment to the plaintiff/claimant to the extent it has satisfied the liability of the other. In case both of them have been impleaded and the apportionment/extent of their negligence has been determined by the court/Tribunal in main case, one joint tortfeasor can recover the amount from the other in the execution proceeding.

(iv) It would not be appropriate for the court/Tribunal to determine the extent of composite negligence of the drivers of two vehicles in the absence of impleadment of other joint tortfeasor. In such a case, impleaded joint tortfeasor should be left, in

case he so desires, to sue the other joint tortfeasor in independent proceedings after passing of the decree or award.

23.2. Reference is also required to be made, to ratio laid down by Hon'ble Apex Court in the case of *In the judgment of T.O. Anthony Vs. Karvarnan and others reported as 2008 A.C.J. 1165*, the Hon'ble Supreme Court has observed that ,

"Composite Negligence" refers to the negligence on the part of the two more persons. Where a person is injured as result of negligence on the part of two or more wrongdoers, it is said that the person was injured on account of composite negligence of those wrongdoers. In such a case, each wrongdoer is jointly and severally liable to the injured for the payment of the entire damage and the injured person has the choice of proceeding against all or any of them. In such case, the injured need not to establish the extent of responsibility of each wrongdoer separately, nor is it necessary for the court to determine the extent of liability of each wrongdoer separately. "

23.3. Reference is also required to be made, to ratio laid down by Hon'ble Apex Court in the case of **Union of India v. United India Insurance Co. Ltd., reported in AIR 1998**

SC 640, wherein it is held that,

"where accident has occurred due to negligence of the drivers of two vehicles and not due to the negligence of the claimant, one of the joint tortfeasors cannot plead contributory negligence on the part of the passengers of the vehicle and qua the passengers of the Bus, who were innocent, the driver and owner of the vehicle would be joint tortfeasors. It is also held that the Motor Accident Claims Tribunal is clearly alternative Forum in substitution of Civil Court for adjudicating upon claims for compensation arising out of the use of the Motor Vehicles. It is well settled that the liability of joint tortfeasors is joint and several and each is responsible, jointly with each and all of the others and also severally for the whole of the amount of damage caused by the tort, irrespective of the extent of his participation. The injured may sue any one of them separately for the full amount of loss or he may sue all of them jointly in the same action and even in the latter case, the judgment so obtained against all of them may be executed in full against any one of them. "

23.4. Similar view is take by the full bench of Hon'ble apex court in the case of *pawan kumar v/s harikrhan dass mohan, reported in 2014 acj 704.* More overin the case of *GSRTC v/s Gurunath sahu ors(supra)* it is held in para 4(1) that ;

" it is settled position that even if the liability of a joint tortfeasor is to the extent of 1 per cent the entire amount , i.e. hundred percent of the amount of compensation awarded can be recovered from the tortfeasor whose liability is adjudged to the extent of 1 percent only ."

24. Thus on above backdrop of established law by the higher Courts it is needless to say that in case of composite negligence, it is not obligatory on the tribunal to assess a separate liability of each vehicle. it is undisputed that in the case on hand the applicant was the pillion rider. It is also established that applicant has not played any role or not contributed in accident. Hence the case on hand is the case of composite negligence. Hence there is no need of apportionment. Thus, from the above referred discussion, it becomes clear that in case of composite negligence, liability for compensation, should not be apportioned, as both wrong-doers are jointly and severally liable for the whole negligence. Rule of apportionment of liability applies in a case of contributory negligence, i.e., where the injured himself

is also guilty of negligence. Here in the present case as discussed earlier claimant is not the tortfeasor nor wrong-doer hence rule of apportionment of liability doesn't applies. On the case on hand Opponent No.1 is the owner of the trailer and the same is evident from the Certificate of Registration produced vide **Exh.37** and therefore Opponent No.1 cannot escape from the liability of giving compensation as he is vicariously liable. On the other hand, Opponent No. 2 is the insurance company of the trailer and the copy of insurance policy is produced vide **Mark 4/6** having the validity period from dated 29.09.2024 to 28.09.2025 which covers the date of accident i.e. 25.10.2024. Therefore, opponent No. 2 being the insurer of said offending vehicle, also liable to indemnify the owner and liable to pay the compensation to the applicant. Hence, opponent No. 2 being the insurer of said offending vehicle, also liable to indemnify the owner and liable to pay the compensation to the applicants. Further, in the present case as discussed earlier claimant is not the tortfeasor nor

wrong-doer hence Rule of apportionment of liability doesn't applies therefore, as per the above discussion, all the Opponent Nos.1 & 2 are jointly and severally liable to pay the compensation to the applicants.

INTEREST ON AWARDED AMOUNT:

25. I have considered the rival contentions of the Id. 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 Vs. 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.”

25.1. 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 petitioner 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 Issue No.2 is decided 'in partly affirmative'*. Hence, as for *Issue No.3*, I pass the following order:-

- O R D E R -

- 1) The claim petition is partly allowed.
- 2) The applicants do recover **Rs.18,54,000/- (Rupees**

Eighteen Lakhs Fifty Four Thousand only) from the Opponent Nos.1 & 2 jointly and severally together with running interest at the rate of 9.0% p.a. from the date of filing of this petition till payment, along with proportionate cost of the application.

- 3) **The claim petition against the Opponent No.3 is hereby dismissed.**
- 4) Opponent Nos.1 & 2 are directed to deposit the amount of award within 30 days from the date of this order.
- 5) **Distribution among applicants:-**
Amount of total compensation shall be distributed among the applicants in the following manner:-
70% : Applicant No.1 i.e. mother of the deceased
30% : Applicant No.2 i.e. grandmother of the deceased
- 6) Thereafter at the first instance deficit court fees

shall be deducted and any amount paid towards interim relief shall be adjusted.

- 7) Out of the amount of share payable to the Applicants, **70%** amount shall be invested as Fixed Deposits in any Nationalized Bank for 5 years named by the applicants and rest **30%** amount of share shall be paid to the applicants through RTGS / NEFT after due verification.
- 8) The applicants shall not be entitled to get any loan, advance or withdrawal or can create any encumbrances on the aforesaid FDR without prior permission of this Tribunal.
- 9) The applicants shall be entitled for periodical interest on the above Fixed Deposit.
- 10) The applicants are 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 applicants, 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.

11) 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.**
- 12) **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.**
- 13) **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.**
- 14) **The Opponent Nos.1 & 2 shall bear their own as well as the cost of the claim petition of the applicants also.**

15) 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. //