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

=====

MAC PETITION NO. 150 OF 2025

Exhibit No.

Applicants:

Legal Heirs of deceased Methaji Bhudarji Thakor

- 1] **Raiben Bhudarji Thakor**
Aged about - 56 years,
Occupation - Household work,
- 2] **Bhudarsing Raichandji Thakor**
Aged about - 62 years,
Occupation - Household work,
- 3] **Rajsing Bhudarsing Thakor**
Aged about - 39 years,
Occupation - Agriculture,
All are R/o. Thakorvaas, Kanjara (Kanajahara),
Jhabadiya, Taluka : Deesa, District : Banaskantha

- Versus -

Opponents :

- 1] **Shree Rayka Transport Company**
C/o. A.K.Somani
Address : Maheshwari Bhawan Salumber,

District - Salumber Upakapada Sawa Ki Dhani,
Samart, Chittaugardh, RJ-312613
(Owner of Trailer No.RJ-58-GA-0078)

- 2] **The New India Insurance Company Ltd.**
Address : H.K.Tower, Aburoad Highway,
Opposite Hanuman Tekri, Taluka : Palanpur,
District : Banaskantha
(Insurance Company of Trailer No.RJ-58-GA-0078)

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Appearance:-

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

Ex-parte order passed against Opponent No.1.

Ld. Advocate **Mr. H.M.Modi** for Opponent No.2.

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Claim of Rs.22,12,000/- u/s. 166 of M.V.Act

J U D G M E N T

(Delivered on 15th April, 2026)

1. The present applicants have filed this claim petition to get compensation of Rs.22,12,000/- in respect of death of deceased Methaji Bhudarji Thakor in vehicular accident which took place on 30.04.2025, 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.30.04.2025 deceased Methaji Bhudarji

Thakor at around 4:30 pm during the evening hours was heading towards Chekhla from Shihori on motorcycle bearing registration no.GJ-01-CH-7607 and at that time one trailer bearing registration no.RJ-58-GA-0078 which was being driven by its driver at an excessive amount of speed, rashly and negligently endangering human lives, dashed the motorcycle of the deceased from behind resultantly leading to the occurrence of the impugned accident. As a result of the impugned accident, deceased fell down the road and sustained very serious and grievous fatal injuries on his head and other body parts and he was immediately taken to Government Hospital, Shihori for primary treatment wherein he succumbed to the fatal injuries. The impugned accident took place due to the sole negligence of the driver of the trailer no.RJ-58-GA-0078. Thus in order to compensate all their losses, present applicants have sought for compensation by filing this claim petition from both the opponents jointly & severally.

2.1 It is also the case of the applicants that the deceased Methaji Bhudarji Thakor had died in the said accident. The applicants submit that deceased had died while undergoing treatment for the serious and grievous fatal injuries he had sustained out of the occurrence 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.22,12,000/- jointly and severally from the opponents.

3. On admission of the petition, notices were issued upon the opponents and on service of notice, none has appeared for Opponent No.1 upon which ex-parte order was passed by this tribunal against the Opponent No.1. On the other hand, Learned Advocate Mr. H.N.Modi has appeared for Opponent No.2, insurance company of motorcycle and has filed written statement vide **Exh.11**. 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 the driver of the trailer was not holding any valid and effective driving license while driving the vehicle and therefore present opponent does not stands any liability towards awarding compensation to the present applicants. 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.

4. Further Ld. Advocate for the Opponent No.2, insurance company of trailer has also argued through written arguments vide **Exh.26** wherein Ld. Advocate has argued out that impugned accident had occurred due to the sole negligency of the driver of the motorcycle, i.e. the deceased himself as he was negligently driving the motorcycle and was overspeeding due to which the

motorcycle dashed with the trailer resulting into the occurrence of the impugned accident. It is further argued that from the panchnama it clearly appears that the motorcycle driven by the deceased had completely damaged and brake marks around 10 ft. is found on the road which shows that the driver of the trailer had applied the brakes to avoid the accident. It is also argued that the driver of the trailer was not holding a valid and effective driving license to drive the vehicle due to which there is breach in terms and conditions of the policy due to which present opponent does not stands any liability towards paying compensation to the applicants. It is further argued that the trailer was not holding any permit as the previous permit had expired on the date of contract of insurance. It is also argued that the owner and insurance company of the motorcycle no.GJ-01-CH-7607 which was being driven by the deceased are not joined in the claim petition even though the vehicle is involved in the accident and so there is non-joinder and misjoinder of necessary parties and

therefore present opponent does not stands any liability for giving compensation to the applicants.

5. On above pleadings of the respective parties, following issues have been framed by this tribunal at **Exh.12**.

-: 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 partly 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.2 – Bhudarsing Raichandji Thakor	14

Documentary Evidences

Sr. No.	Particular	Exh./ Mark
1.	Copy of FIR	16
2.	Copy of Panchnama	17
3.	Copy of Inquest Panchnama	18
4.	Copy of School Leaving Certificate of deceased	24

8. The Opponent No.2 insurance company has produced the copy of insurance policy vide Exh.22.

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.2 has filed his affidavit in nature of examination-in-chief on oath at **Exh:14** wherein he has reiterated the facts of his pleading and has further deposed that on dt.30.04.2025 deceased Methaji Bhudarji Thakor at around 4:30 pm during the evening hours was heading towards Chekhla from Shihori on motorcycle bearing registration no.GJ-01-CH-7607 and at that time one trailer bearing registration no.RJ-58-GA-0078 which was being driven by its driver at an excessive amount of speed, rashly and negligently endangering human lives,

dashed the motorcycle of the deceased from behind resultantly leading to the occurrence of the impugned accident. As a result of the impugned accident, deceased fell down the road and sustained very serious and grievous fatal injuries on his head and other body parts and he was immediately taken to Government Hospital, Shihori for primary treatment wherein he succumbed to the fatal injuries. The impugned accident took place due to the sole negligence of the driver of the trailer no.RJ-58-GA-0078. Further he has also been cross-examined by Ld. Advocate for the Opponent No.2, I.C. wherein applicant no.2 has indisputable narrated the entire facts supporting the claim petition wherein nothing adverse seems to be coming out from his cross-examination.

8.2. Looking to the FIR at **Exh.16** and Accident Site Panchnama at **Exh.17** prepared by police, it clearly transpires that this accident had occurred on the Shihori to Khimana national highway road.

8.3. Looking to the FIR produced vide **Exh.16**, it appears that the FIR has been lodged by Rajsing Bhudarsing Thakor, i.e. applicant no.2. It appears from the contents of the FIR, that on dt. 30.04.2025 deceased Methaji Bhudarji Thakor at around 4:30 pm during the evening hours was heading towards Chekhla from Shihori on motorcycle bearing registration no.GJ-01-CH-7607 and at that time one trailer bearing registration no.RJ-58-GA-0078 which was being driven by its driver at an excessive amount of speed, rashly and negligently endangering human lives, dashed the motorcycle of the deceased from behind resultantly leading to the occurrence of the impugned accident. As a result of the impugned accident, deceased fell down the road and sustained very serious and grievous fatal injuries on his head and other body parts and he was immediately taken to Government Hospital, Shihori for primary treatment wherein he succumbed to the fatal injuries. The impugned accident took place due to the sole negligence of the driver of the trailer no.RJ-58-GA-0078. The copy of panchnama is produced vide

Exh.17 and looking to the said panchnama, it clearly transpires that the accident had occurred on the Shihori to Khimana national highway and after perusing the panchnama it appears that the facts of the panchnama are very much similar to the facts of the FIR and further it appears that blood mass was found from the spot of accident and the motorcycle was also recovered in heavily damaged condition as the body and spare parts of the motorcycle had broken due to the collision and besides that no other eye-catching evidences have been recovered from the spot of accident. 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 or driver of the motorcycle. 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. 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....”.

- 8.4. 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 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 motorcycle 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.

8.5. Thus, in view of the above facts and circumstances on record, this Tribunal finds that 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 FIR and panchnama, this tribunal deems fit that the driver of the trailer is solely negligent for the occurrence of the impugned accident and under these circumstances, ***Issue No. 1 is answered accordingly "In the 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 their claim petition that at the time of accident the deceased was 30 years old. In support of their contentions, the applicants have produced the School Leaving Certificate of the deceased vide **Exh.24** perusing which it appears that the D.O.B. of the deceased is mentioned as 01/05/1994 whereas the impugned accident had occurred on dt.30/04/2025 so after calculation it appears that deceased was aged 30 years 11 months 29 days, i.e. 31 years at the time of accident. Thus, considering the driving license produced on record, it appears that the age of the deceased was 31 years at the time of accident and therefore, this Tribunal comes to the conclusion that the deceased was **31 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 **31 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 **16** 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 **31 years** old and was healthy and stout without any disease or disablement and he was earning Rs.15,000/- per month by doing fencing and agricultural work but in support of their version applicants have not produced any strong and cogent evidence on record to establish the source of income of the applicants 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 2025 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.13,000/-** 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) xxxxxxxx

(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.

14.6. 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.'

14.7. 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. Gangalakshmamma, 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 Pushpa'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 **31 years** of age at the time of the accident and he was self-employed, therefore, he is entitled for **40%** addition to income for the future prospects. Now the monthly income of the deceased was assessed as Rs.18,200/- P.M. Therefore, after considering the future prospectus it is assessed as **Rs.18,200/- p.m.** [Rs.13,000-p.m. + 40% (Rs.5,200/-) = Rs.18,200/- 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 applicants as dependents, 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.”

14.3. 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, i.e. he was a bachelor at the time of accident and present applicants are the father, mother and brother of the deceased and except them no other persons are joined in the claim petition, 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.18,200/- x 12 months)	Rs.2,18,400/-
2.	Annual amount of personal expenses incurred by the deceased in his own maintenance:- (Rs.2,18,400/- x 1/2 nd)	Rs.1,09,200/-
3.	Annual Loss of Dependency:- (Rs.2,18,400 - Rs.1,09,200/-)	Rs.1,09,200/-
4.	Total Loss of dependency:- Rs.1,09,200/- x 16 (multiplier)	<u>Rs.17,47,200/-</u>

Conventional Heads:

15. The Learned Counsel for the petitioners orally submitted that as the deceased was 31 years of age at the time of accident hence the petitioners 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.

16. 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.

16.1. 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, 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, 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.”

16.2. 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 far as spousal consortium or the parental consortium is not arose by considering the facts of the case. As per the record, applicant nos.1 & 2 are the parents of the deceased and they have requested for the filial consortium but the deceased was major so this tribunal humbly opines that the deceased being major, applicants are not entitled for the parental consortium. Same as applicant nos.1 & 2, applicant no.3 is the son of the applicants and considering the record applicant no.3 is also major so applicant no.3 along with applicant nos.1 & 2 will not be entitled for filial and parental consortium respectively.

16.3. Further, 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.*

16.4. 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.

17. Thus, claimants are entitled to the following amount of the compensation under the different heads.

Sr. No.	Particulars	Amount
1.	Future Loss of dependency	Rs.17,47,200/-
2.	Funeral Expense (20% enhanced)	19,800/-
3.	Loss of Estate (20% enhanced)	19,800/-
	Total Compensation	Rs.17,86,800/-

18. Thus, the claimants are entitled to get a sum of

Rs.17,86,800/- as compensation.

::LIABILITY::

19. So far as liability to pay compensation to the applicants is concerned, as discussed above impugned accident had occurred due to the sole negligency 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 **Mark 4/4**, also owner of the vehicle has not appeared before this tribunal due to which ex-parte order was passed by this tribunal against the owner, i.e. opponent no.1, thus Opponent No.1 being the owner of the trailer has nothing to say in his defence and so he cannot escape from the liability of giving compensation to the applicants.

19.1. On the other Ld. Advocate for the Opponent No.2, insurance company of trailer has raised a dispute that the driver of the motorcycle 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 **Exh.22** it appears that date of validity of the insurance policy is from 28/02/2025 to 27/02/2026 whereas the impugned accident took place on dt.30/04/2025 which means said insurance policy was in force and was active on the day of accident. It is required to note here that the opponent no.2 insurance company in its written statement as well as in written arguments has contested that the driver of the offending vehicle trailer was not having any valid driving license so they are not liable to indemnify the claim as it is a clear cut breach of the terms and conditions of the policy.

19.2. This tribunal has gone through the evidences produced on record. It is bound duty of the insurance company to prove that the driver of the offending vehicle has no valid driving license. By considering the entire record,

the insurance company has not produced any contrary evidence, nor have examined the driver, nor examined the RTO Officer, nor produced any single evidence which suggests that driver of the offending vehicle trailer was not having a valid driving license. Hence it seems that Ld. Advocate for the opponent no.2 insurance company has taken the defence casually and not intended to produce any evidence so in absence of any evidence qua driving license this tribunal is not in agreement with the arguments of the insurance company. Thus, both the Opponents are held liable to pay compensation to the applicants jointly & severally.

INTEREST ON AWARDED AMOUNT:

20. I have considered the rival contentions of the ld. 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.”

20.1. 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"*** and 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.17,86,800/- (Rupees Seventeen Lakhs Eight Six Thousand Eight Hundred only)** from the opponents 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) Opponents are directed to deposit the amount of award within 30 days from the date of this order. Thereafter at the first instance deficit court fees shall be deducted and any amount paid towards interim relief shall be adjusted.

4) Distribution among applicants:-

Amount of total compensation shall be distributed among the applicants in the following manner:-

40% : Applicant No.1 i.e. father of the deceased

40% : Applicant No.2 i.e. mother of the deceased

20% : Applicant No.3 i.e. brother of the deceased

- 5) 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.
- 6) 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.
- 7) The applicants shall be entitled for periodical interest on the above Fixed Deposits.

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- 8) The applicants are directed to submit the following details **within one week from today:-**
- (1) **Name of the applicants 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.**
- 9) **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)

[A. J. Kanani]
 Chairman,
 MACT (AUX.) Palanpur

-
- 3) **Place**
 - 4) **Date of award**
 - 5) **Amount deposited**
 - 6) **Income Tax Deduction at Source, if any,
Unique Transaction Reference (UTR) No.**
- 10) **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.**
- 11) **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.**
- 12) **The opponents shall bear their own as well as the cost of the claim petition of the applicants also.**

13) Award be drawn accordingly.

Pronounced in the open Court today on this 15th day of
April, 2026.

Date :- 15-04-2026
Place:- Palanpur.

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

// K.A. //