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Duration	00	09	10
	<u>YY</u>	<u>MM</u>	<u>DD</u>

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

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MAC PETITION NO. 195 OF 2025

**Exhibit No.**

**Applicant:**

- 1] **Thakor Hansaben Shambhuji**  
Aged about - 43 years,  
Occupation - Household work,  
R/o. Sarkari Deri Road, Ujhetiya Vaas,  
Chandisar, Taluka : Palanpur,  
District : Banaskantha

**- Versus -**

**Opponents :**

- 1] **Prakashkumar Ranulal Khatri**  
Aged about - Major, Occupation - Transport,  
R/o. C/300, Shrinagar Society, Opposite  
Reliance Mall, Mahavir Nagar, Himmatnagar,  
District : Sabarkantha  
**(Owner of Eeco Car No.GJ-09-BL-0745)**
- 2] **Magma HDI General Insurance Company Ltd.**  
Address : S/1, 2nd Floor, Sigma Oasis, Axe Gangar  
Society, Near HDFC Bank, Rajkamal Petrolpump,

District : Mehsana  
**(Insurance Company of Eeco Car No.GJ-09-BL-0745)**

**Appearance:-**

Ld. Advocate **Mr. C.S.Parmar** for Applicant.

Ld. Advocate **Mr. M.S.Joshi** for Opponent No.1.

Ld. Advocate **Mr. N.M.Joshi** for Opponent No.2.

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**Claim of Rs.2,50,000/- u/s. 164 of M.V.Act**

**J U D G M E N T**

**(Delivered on 15<sup>th</sup> April, 2026)**

1. The present applicant has filed this claim petition to get compensation of Rs.2,50,000/- in respect of injury caused due to vehicular accident which took place on 20.02.2025, under the provision of Section 164 of the Motor Vehicle Act.
2. Coming to the factual aspect of the case of the applicant, on dt.20/02/2025, present applicant along with other persons was traveling in a rickshaw and was heading towards Neurofit Hospital, Palanpur as Hansaben Dalpatbhai had sustained injury in her spine due to severe fall and when the rickshaw had reached near

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Zayka Hotel located beside the bridge at the around 12:15 pm during the noon hours, the driver of the rickshaw was driving the vehicle at a moderate speed on the correct side of the road and at that relevant time one white color Eeco car bearing registration no.GJ-09-BL-0745 which was being driven by its driver at an excessive amount of speed, rashly and negligently endangering human lives dashed the said rickshaw from behind resultantly leading to the occurrence of the impugned accident. As a result of the impugned accident, present applicant and the other persons who were traveling inside the rickshaw, got thrown out in which one Kevuben died on the spot and the other persons also sustained very serious and grievous injuries including the present applicant. The impugned accident took place due to the sole negligence of the driver of the Eeco car. Thus in order to compensate all their losses, present applicant has sought for compensation by filing this claim petition from both the opponents jointly & severally.

**2.1** It is also the case of the applicant that she had sustained very serious injuries out of the occurrence of the impugned accident and she has incurred huge expenses behind her treatment at various hospitals. The applicant has further stated that due to said accident she has suffered much pain and shock and also the loss of actual income and also from the prospective income. So, she has stated that she is entitled to get compensation of Rs.2,50,000/- 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. M.S.Joshi has appeared for Opponent No.1 and has submitted written arguments vide **Exh.11** wherein present opponent has denied each and every averments and allegations leveled by the applicants and has further prayed to dismiss the claim petition with costs. On the other hand, Learned Advocate Mr. N.M.Joshi has appeared for Opponent No.2, insurance company of motorcycle and has filed written statement

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vide **Exh.25**. 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 Ecco car 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. On above pleadings of the respective parties, following issues have been framed by this tribunal at **Exh.12**.

**-: ISSUES :-**

- (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 get compensation? If yes, from whom and what amount?
- (3) What order and award ?

5. My findings on the above issues are as under:

- (1) In affirmative.
- (2) In affirmative. As per final order.
- (3) As per final order.

**-: REASONS :-**

**Issue No.1: Negligence**

6. The applicant has produced the following oral and documentary evidence to prove their case.

**Oral Evidence**

Sr.No.	Particular	Exh.
1.	Affidavit of Applicant – <b>Thakor Hansaben Shambhuji</b>	40

**Documentary Evidences**

<b>Sr.No.</b>	<b>Particular</b>	<b>Exh.</b>
1.	Certified copy of Complaint	16
2.	Certified copy of Panchnama	17
3.	Certified copy of Medical Certificate, General Hospital, Palanpur	18
4.	Certified copy of Medico Legal Certificate, Guru Orthopedic Hospital	19
5.	Disability Certificate	20

7. The Opponent No.2 insurance company has produced the following oral as well as documentary evidences which are as under:

#### **Oral Evidence**

<b>Sr. No.</b>	<b>Particular</b>	<b>Exh.</b>
1.	Oral deposition of witness Kanabhai Ajabhai Kodiatar, PSI	28
2.	Affidavit of Suhitkumar Rajendraprasad Suthar, Legal Officer of insurance company	32

#### **Documentary Evidences**

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<b>Sr. No.</b>	<b>Particular</b>	<b>Exh./ Mark</b>
1.	Copy of notice sent to the owner of the Eeco car	34
2.	Copy of notice sent to the driver of the Eeco car	35
3.	Copy of Track Consignment Report	36

8. The Applicant has filed her affidavit in nature of examination-in-chief on oath at **Exh:40** wherein she has reiterated the facts of her pleading and has further deposed that dt.20/02/2025, present applicant along with other persons was traveling in a rickshaw and was heading towards Neurofit Hospital, Palanpur as Hansaben Dalpatbhai had sustained injury in her spine due to severe fall and when the rickshaw had reached near Zayka Hotel located beside the bridge at the around 12:15 pm during the noon hours, the driver of the rickshaw was driving the vehicle at a moderate speed on the correct side of the road and at that relevant time one white color Eeco car bearing registration no.GJ-09-BL-

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0745 which was being driven by its driver at an excessive amount of speed, rashly and negligently endangering human lives dashed the said rickshaw from behind resultantly leading to the occurrence of the impugned accident. As a result of the impugned accident, present applicant and the other persons who were traveling inside the rickshaw, got thrown out in which one Kevuben died on the spot and the other persons also sustained very serious and grievous injuries including the present applicant. The impugned accident took place due to the sole negligence of the driver of the Eeco car. Thereafter Ld.Advocate Mr. D.J.Tiwari for the Opponent No.1 and Ld.Advocate Mr. N.M.Joshi for the Opponent No.2, insurance company has cross-examined the applicant at length wherein applicant has indisputably narrated the entire facts supporting the claim petition and nothing adverse seems to be coming out from his cross-examination.

**REASONS FOR FINDING ON ISSUE NO. 1.**

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9. Learned advocate for the applicant has vehemently argued before this Tribunal on the point of negligence that in case of claim petition filed under Section 164, there is no need to consider negligence and responsibility of any person for occurrence of accident. It is also contended that on dt. 20/02/2025, present applicant along with other persons was traveling in a rickshaw and was heading towards Neurofit Hospital, Palanpur as Hansaben Dalpatbhai had sustained injury in her spine due to severe fall and when the rickshaw had reached near Zayka Hotel located beside the bridge at the around 12:15 pm during the noon hours, the driver of the rickshaw was driving the vehicle at a moderate speed on the correct side of the road and at that relevant time one white color Eeco car bearing registration no.GJ-09-BL-0745 which was being driven by its driver at an excessive amount of speed, rashly and negligently endangering human lives dashed the said rickshaw from behind resultantly leading to the occurrence of the impugned accident. As a result of the impugned accident,

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present applicant and the other persons who were traveling inside the rickshaw, got thrown out in which one Kevuben died on the spot and the other persons also sustained very serious and grievous injuries including the present applicant. The impugned accident took place due to the sole negligence of the driver of the Eeco car. It is also submitted that applicant was aged 43 years at the time of accident and was doing household work but due to the impugned accident she is not able to do the same. On account of the injuries sustained out of the impugned accident present applicant is deprived of income and has suffered great mental shock. Therefore, it is submitted that the applicant has claimed Rs.2,50,000/- from both the opponents as compensation as provided in the Schedule under Section 164 of the M.V. Act.

- 9.1.** It is settled position of law that, under Section 164 of the Motor Vehicles Act which is subsequently amended from 163-A and the amount was fixed of **Rs.5,00,000 in case of death of the victim** and upto **Rs.2,50,000/- for the**

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**injuries** sustained in the accident. Hence, applicant is not bound to prove negligence on the part of tortfeasor. It is not for the wrongdoer to excuse himself by proving that accident was inevitable and due to no negligence of his part, but claimant himself was negligent or wrongdoer. However, this claim petition has been filed by the claimants under Section 164 of Motor Vehicles Act for getting compensation for the injuries sustained by applicant Thakor Hansaben Shambhuji in the accident. As per the present settled law laid down by the Hon'ble Supreme Court in the case of **United India Insurance Co. Ltd. V/s Sunil Kumar and another reported in 2018 ACJ 1 (SC)**, the petition filed under Section 163-A is required to be decided on principle of "No Fault Liability" and in said petition, the Tribunal need not to consider and determine any dispute regarding rash and negligent driving of any of the drivers of the vehicles involved in the accident including the deceased.

**9.2** Thus, in view of the above facts and circumstances on

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record, the accident and injuries sustained by applicant is not disputed by the opponent no.2 insurance company and even in the cross-examination of applicant, it is also admitted by him that impugned accident had occurred due to which he has sustained injuries and also perusing the Complaint and panchnama it appears that impugned accident had taken place due to which the applicant had sustained injuries and as the present claim petition is filed u/s. 164 of M.V.Act, applying the principles of "No Fault Liability" there is no requirement to consider and determine any dispute regarding rash and negligent driving of any of the drivers of the vehicles involved in the accident including the applicant, hence as discussed above under these circumstances, ***Issue no. 1 is answered accordingly.***

**REASONS FOR FINDING ON ISSUE NO.2.**

10. Now, at this juncture it is required to be noted that Ld.Adv. for the applicant has vehemently argued in the main claim petition at Exh.1, before this tribunal on the point of

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negligence in the case of claim petition filed under Section 164 of the M.V.Act, in which as per the newly made amendment the applicant is entitled to get Rs.2,50,000/-. It is also contended that present applicant along with other persons was traveling in a rickshaw and was heading towards Neurofit Hospital, Palanpur as Hansaben Dalpatbhai had sustained injury in her spine due to severe fall and when the rickshaw had reached near Zayka Hotel located beside the bridge at the around 12:15 pm during the noon hours, the driver of the rickshaw was driving the vehicle at a moderate speed on the correct side of the road and at that relevant time one white color Eeco car bearing registration no.GJ-09-BL-0745 which was being driven by its driver at an excessive amount of speed, rashly and negligently endangering human lives dashed the said rickshaw from behind resultantly leading to the occurrence of the impugned accident. As a result of the impugned accident, present applicant and the other persons who were traveling inside the rickshaw, got thrown out in which

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one Kevuben died on the spot and the other persons also sustained very serious and grievous injuries including the present applicant and therefore as per the new amendment framed under Section 164 of the M.V.Act, present applicant has sought for compensation of Rs.2,50,000/- from the opponents jointly & severally.

**10.1** This Tribunal is aware of principles of awarding just compensation. So keeping in view the fact of case that the Tribunal has a duty to grant a just and reasonable compensation. What would, however, be a just and reasonable compensation depends upon the fact-situation obtaining in each case. No hard and fast rule therefor can be laid down. **The compensation under Section 164 is based on amended provisions of the Motor Vehicles Act in which Section 164 in The Motor Vehicles Act, 1988 as per Section 164;**

*Payment of compensation in case of death or grievous hurt, etc. - (1) Notwithstanding anything contained in this Act or in any other law for the time*

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*being in force or instrument having the force of law, the owner of the motor vehicle or the authorized insurer shall be liable to pay in the case of death or grievous hurt due to any accident arising out of the use of motor vehicle, a compensation, of a sum of five lakh rupees in case of death or of two and a half lakh rupees in case of grievous hurt to the legal heirs or the victim, as the case may be.*

11. Thus, as per the facts of Complaint and panchnama it is clear that the impugned accident had taken place in which the applicant had sustained very serious and grievous injuries also from the Medical & Treatment Certificate and Disability Certificate produced on record it appears that applicant has sustained fracture on her left hand due to which she is having difficulty in stretching out her hand and making fist and therefore even though applicant has not produced any medical expenses bills on record but since she had sustained injury and fracture, so she must have spent a fortune behind her treatment or

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purchasing of medicines and therefore it is prima facie established on record that applicant had sustained injuries from the vehicular accident. So, in view of the Section 164 of M.V.Act and as per the new amendment made, in the present claim petition the claimant is entitled to get a sum of **Rs.2,50,000/-** as compensation.

**::LIABILITY::**

**12.** 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 Eeco car and the same was owned by Opponent No.1 which is evident from the Certificate of Registration produced vide **Mark 4/5** and therefore opponent no.1 cannot escape from the liability of giving compensation to the applicant.

**12.1.** On the other Ld. Advocate for the Opponent No.2, insurance company of Eeco car has raised a dispute that the driver of the Eeco was not holding a valid and effective driving license to drive the vehicle and

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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 12/08/2023 to 11/08/2026 whereas the impugned accident took place on dt.20/02/2025 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***

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*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."*

12.2. 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 driver of the motorcycle was not knowing to drive the Eeco car and he was totally unknown to the mechanism as well as driving of the Eeco car. Driving is a skill and driving generally is not dependent on the license. No doubt it is true that in India a person is

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supposed to drive the vehicle only if he attains the license but so far as the principle of basic fundamental breach is concerned, it is upon the opponent insurance company to prove that the driver was unknown to driving, he was totally ignorant about the mechanism due to his inexperience or skill of the driving the accident has occurred then and there only the fundamental breach can be established. However, in support of his version Ld. Advocate for the opponent insurance company has examined the Legal Officer of the opponent insurance company vide **Exh.32** wherein he has also strongly relied on the fact that driver of the Eeco car was not holding a valid and effective driving license and for production of driving license notice was also given to the opponent no.1 as well as the driver but despite that the driving license was not produced on record. Also the Investigating Officer has been examined by the Ld. Advocate of the insurance company vide **Exh.29**, wherein he has admitted that he had asked for the driving license of the driver of the Eeco car but he had

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answered that he is not having his driving license upon which said Investigating Officer had inquired in the RTO, Palanpur for the driving license of the driver of the Eeco car wherein his driving license information was not found as the native of driver of Eeco car was of Maharashtra and Rajasthan but despite that the Investigating Officer had urged him to produce his driving license as driving license once issued is valid in all over India, but the same was not produced by the driver. Thus, at this juncture it the duty of the opponent no.2 insurance company to prove and establish the fact on record that driver of the Eeco car was not holding a a valid and effective driving license which opponent has failed miserably and therefore at this juncture the arguments leveled by the Ld. Advocate of the insurance company does not stands tenable and so opponent insurance company cannot escape its liability towards giving compensation to the applicants as the judgment and direction passed by the Hon'ble Apex Court in case of **Swaran Singh (Supra)** has not yet been set aside and

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is still in force, even if it is believed that the driver of the Eeco car 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.

**INTEREST ON AWARDED AMOUNT:**

13. 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*

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*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.”*

**13.1.** 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 affirmative.*** Hence, as for ***Issue No.3,*** I pass the following order:-

**- O R D E R -**

- 1) The present claim petition is allowed.
- 2) The applicant do recover **Rs.2,50,000/- (Rupees Two Lakhs Fifty Thousand only)** from the Opponents jointly & 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.
- 4) Thereafter at the first instance deficit court fees shall be deducted and any amount paid towards interim relief shall be adjusted.
- 5) Out of the amount payable to the applicant, **70%** amount shall be invested in any Nationalized Bank for a period of 5 years in FDR in the name of applicant with a condition that the applicant will not be entitled to borrow loan or create any encumbrance on the said deposit and the

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remaining **30%** amount shall be paid to the applicant through RTGS / NEFT after due verification.

- 6) The applicant is directed to submit the following details **within one week from today:-**
- (1) Name of the applicant with address.**
  - (2) Name of the Bank & Branch with IFSC Code, Account Number of the applicant.**
  - (3) First page of the bank passbook, which will compulsorily contain the photograph of the 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.**
- 7) **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**

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

.....  
(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.**
- 8) **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.**
- 9) **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.**
- 10) **The opponents shall bear their own cost as well as**

cost of claim petition of applicant.

**11)** Award be drawn accordingly.

Pronounced in the open Court today on this 15<sup>th</sup> 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. //