Received on	**05**	**07**	**2025**
Registered on	**05**	**07**	**2025**
Decided on	**15**	**04**	**2026**
Duration	**00**	**09**	**10**
	YY	**MM**	**DD**

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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. **196** OF **2025**

Exhibit No.

Applicants:

Legal Heirs of deceased Shambhuji Laxmanji Thakor

1] **Thakor Hansaben Shambhuji**
Aged about - 43 years,
Occupation - Household work,

2] **Thakor Prathambhai Shambhubhai**
Aged about - 21 years,
Occupation - Driving,

3] **Komal Shambhuji Ujhetiya (Thakor)**
Aged about - 17 years,
Occupation - Student,

4] **Surbhi Shambhuji Thakor**
Aged about - 12 years,
Occupation - Student,
All are R/o. Sarkari Deri Road, Ujhetiya Vaas,
Chandisar, Taluka : Palanpur,
District : Banaskantha
(Applicant Nos.3 & 4 are minor so their legal

guardian/next friend is their mother, i.e. Applicant No.1)

- 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)

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Appearance:-
Ld. Advocate ***Mr. C.S.Parmar*** for Applicants.
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.60,00,000/- 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.60,00,000- in respect of death of deceased Shambhuji Laxmanji Thakor in vehicular accident which took place on 20.02.2025, 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.20.02.2025 deceased Shambhuji Laxmanji Thakor 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 deceased 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, deceased and the other persons who were traveling inside the rickshaw, got

thrown out and deceased had sustained very serious and grievous fatal bodily injuries and he was immediately taken to Civil Hospital, Palanpur on 108 ambulance wherein he was admitted from dt.20/02/2025 to 02/03/2025 and thereafter he was shifted to the hospital of Dr. Umang T. Vaishnav for treatment of fatal injuries he had sustained in his head and stomach wherein while undergoing treatement deceased succumbed to the fatal injuries on dt.04/03/2025. 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 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 Shambhuji Laxmanji 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.60,00,000/- 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. M.S.Joshi has appeared for Opponent No.1 and has submitted written arguments vide **Exh.12** 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 vide **Exh.28.** 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 Eeco 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. Further Ld. Advocate appearing for the applicants has argued through written arguments vide **Exh.41** wherein Ld. Advocate has argued out that the impugned accident had occurred due to the sole negligence of the driver of the Eeco car as the deceased with other persons was seated inside the rickshaw which was being driven by its driver at a moderate speed and at that time the driver of the Eeco car dashed the rickshaw from behind resulting into the occurrence of the impugned accident. It is

further argued that due to the impact of the collision deceased and the other persons got thrown out on the road wherein deceased had sustained very serious and grievous fatal injuries due to which later he succumbed while undergoing treatment. It is also argued that said Eeco car is under the ownership of opponent no.1 and is insured by opponent no.2 and therefore both the opponents shall be held liable for giving compensation to the applicants. Moreover in support of his arguments, Ld. Advocate has also relied on the following citations and authorities which are as under:

1. Neela & Others Vs. Manager, Bharati AXA General Insurance Company Ltd. 2023 ACJ 2021 Hon'ble Supreme Court of India.

2. Amjiba Wd/o. Narendrasinh @ Kalusinh Champaksinh Dabhi & 7 Others Vs. Lilaram Johrilal Yadav & 4 Others R/First Appeal No.2370 of 2019 Hon'ble High Court of Gujarat.

4.1. On the other hand, Ld. Advocate for the Opponent No.2,

insurance company of motorcycle no.GJ-09-DL-4518 has also argued through written arguments vide **Exh.56** wherein Ld. Advocate has argued out that the impugned accident had occurred due to the negligent driving by the driver of the motorcycle no.RJ-24-SL-9601, i.e. the deceased himself because he was not vigilant and careful while driving the motorcycle due to which the impugned accident had occurred. It is also argued that the driver of the motorcycle no.GJ-09-DL-4518 was not holding a valid and effective driving license at the time of driving of the vehicle and so there is a breach in the terms and conditions of the policy and therefore present opponent does not stands any liability towards awarding compensation to the applicants. Furthermore, in support of his arguments Ld. Advocate has relied on the following citations which are as under:

1. National Insurance Company Ltd. Vs. Vidyadhar Maharivala AIR 2009(SC) 208 = 2008(12) Scale Hon'ble Supreme Court of India.

2. Rambabu Tiwari Vs. United India Insurance

Company Ltd. 2008(8) SCC 165 = AIR 2009 (SC) Supp 1264 Hon'ble Supreme Court of India.

3. New India Assurance Company Ltd. Vs. Mandar Madhav Tambe & Others 1996 ACJ 253(SC) Hon'ble Supreme Court of India.

4. United India Insurance Company Ltd. Vs. Gian Chand 1997 ACJ 1065 (SC) Hon'ble Supreme Court of India.

5. New India Assurance Company Ltd. Vs. Ketanbhai Bhagwandas Shah 2002 (2) GLH 50 Hon'ble Supreme Court of India.

6. Oriental Insurance Company Ltd. Vs. Prithviraj 2008 ACJ 733 (SC) Hon'ble Supreme Court of India.

5. On above pleadings of the respective parties, following issues have been framed by this tribunal at **Exh.13.**

-: 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.1 – **Hansaben Shambhuji Thakor**	15

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

Documentary Evidences

Sr. No.	Particular	Exh./ Mark
1.	Certified copy of Complaint	17
2.	Certified copy of Panchnama	18
3.	Certified copy of Medical Certificate, General Hospital, Palanpur	19
4.	Certified copy of Treatment Certificate given by Dr. Umang T. Vaishnav	20
5.	Copy of Driving License of deceased	21, 23
6.	Cash memo, invoice and medical bills of treatment of deceased before his death	22
7.	CT Scan Brain Report of deceased	24
8.	Copy of Chargesheet	25
9.	Invoice of Swastik Intensive Care Unit	39

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

Oral Evidence

Sr. No.	Particular	Exh.
1.	Oral deposition of witness Kanabhai Ajabhai Kodiatar, PSI	29
2.	Affidavit of Suhitkumar Rajendraprasad Suthar, Legal Officer of insurance company	32

Documentary Evidences

Sr. No.	Particular	Exh./ Mark
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

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:15** wherein she has reiterated the facts of his pleading and has further deposed that on dt.20.02.2025 deceased Shambhuji Laxmanji Thakor 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 deceased 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, deceased and the other persons who were traveling inside the rickshaw, got thrown out and deceased had sustained very serious and grievous fatal bodily injuries and he was immediately taken to Civil Hospital, Palanpur on 108 ambulance wherein he was admitted from dt.20/02/2025 to 02/03/2025 and thereafter he was shifted to the hospital of Dr. Umang T. Vaishnav for treatment of fatal injuries he had sustained in his head and stomach wherein while undergoing treatement deceased succumbed to the fatal injuries on dt.04/03/2025. The impugned accident took place due to the sole negligence of the driver of the Eeco car. Further he has also been cross-examined by Ld. Advocate for the Opponent No.2, I.C. wherein applicant no.1 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 Complaint at **Exh.17** and Accident Site

Panchnama at **Exh.18** prepared by police, it clearly transpires that this accident had occurred near the bridge at Zayka Hotel on the Chandisar road.

8.3. Looking to the Complaint produced vide **Exh.17**, it appears that the FIR has been lodged by Haribhai Ratnabhai Raval. It appears from the contents of the complaint, that on dt.20.02.2025, present complainant along with the deceased and other persons were traveling the rickshaw and the said rickshaw was being driven by the deceased and they were heading towards Neurofit Hospital, Palanpur for treatment of Hansaben as she had sustained injury on her spine due to fall and the said rickshaw was being driven by the deceased at a moderate speed and at that time when the rickshaw reached near the bridge at Zayka Hotel, one Eeco car bearing no.GJ-09-BL0745 which was being driven by its driver at an excessive amount of speed, rashly and negligently endangering human lives, dashed the rickshaw from behind resultantly leading to the occurrence of the

impugned accident. It is further contended that due to the impact of the collision, complainant, deceased and other persons got thrown on the road wherein complainant's cousin Keyu aged 6 years died on the spot and all the other persons including the deceased have sustained very serious and grievous fatal injuries. The impugned accident had occurred due to the sole negligency of driver of Eeco car. The copy of panchnama is produced vide **Exh.18** and looking to the said panchnama, it clearly transpires that the accident had occurred on the bridge at Zyka Hotel connecting to Chandisar and after perusing the panchnama it appears that the facts of the panchnama are very much similar to the facts of the Complaint and further it appears that both the vehicles have been recovered from the spot of accident in heavily damaged condition, wherein the Eeco car had sustained damages in its front portion like the bumper, head light, glass, front number plate of the vehicle had completely broken, whereas the back portion of the rickshaw had completely bent inside due to the collision and the seat and other body parts of the rickshaw

had bent and broken badly, even broken parts of the vehicle and glass are scattered at the place of incidence 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 Eeco car. 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 the

chargesheet produced vide **Exh.25** has been filed against the driver of the Eeco car. 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 charge sheet itself is pointing towards the sole negligency of the driver of the Eeco car, also being the driver of the vehicle it was the first and foremost duty of the driver of the vehicle to drive the vehicle at a moderate speed and also observe the traffic rules because from the Complaint as well as from the panchnama it appears that the Eeco car had dashed the rickshaw from behind which means that the driver of the Eeco car had miserably failed to follow the traffic rules. If the driver of Eeco car had taken proper care and have driven his vehicle at a 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 involvement of vehicle and place of accident is duly proved. It is undisputed fact

that present accident was occurred on the bridge near Zayka Hotel. From evidence produced on record, it can certainly be said that, if the driver of the Eeco car had taken a little care and if he remained attentive while plying his vehicle on the road and by following rules of road traffic, he could have averted this accident. Thus, in view of the above discussion and keeping in view the nature of accident along with the complaint, panchnama and chargesheet, this tribunal has all reasons to believe that the impugned accident had occurred due to the sole negligency of the driver of the Eeco car 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 be 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. <u>Assessment of Age of deceased and Multiplier</u>

12. The applicants have stated in their claim petition that at the time of accident the deceased was 46 years old. In support of their contentions, the applicants have produced the Driving License of the deceased vide **Exh.23** perusing which it appears that the D.O.B. of the deceased is mentioned as 26/04/1977 whereas the impugned accident had occurred on dt.20/02/2025 so after calculation it appears that deceased was aged 47 years 09 months 25 days, i.e. 48 years at the time of accident. Thus, considering the driving license produced on record, it appears that the age of the deceased was 48 years at the time of accident and therefore, this Tribunal comes to the conclusion that the deceased was **48 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.

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

12.2. Since the age of the deceased assessed as **48 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 ***13*** 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 **48 years** old and was healthy and stout without any disease or disablement and he was earning Rs.30,000/- per month by doing rickshaw and car driving 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 <u>Santosh Devi Vs. National Insurance Company Ltd. and others 2012(6) SCC 421</u> 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 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 **48 years** of age at the time of the accident and he was self-employed, therefore, he is entitled for **25%** addition to income for the future prospects. Now the monthly income of the deceased was accessed as Rs.16,250/- P.M. Therefore, after considering the future prospectus it is assessed as **Rs.16,250/- p.m.** [Rs.13,000/- p.m. + 40% (Rs.3,250/-) = Rs.16,250/- 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 verbetam.

> ***"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 married and was survived by the present applicants, wherein it appears that applicant no.1 is the wife of the deceased and applicant nos.2 to 4 are the children of the deceased in which applicant no.2 is major and being major he cannot be dependent on the income of his father and therefore applicant no.2 is not a dependent of the deceased but since applicant nos.3 & 4 are minor they will be considered as dependent on the income of the deceased, hence in view of the case of Pranay Sethi (Supra) **1/3rd** 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.16,250/- x 12 months)	**Rs.1,95,000/-**
2.	Annual amount of personal expenses incurred by the deceased in his own maintenance:- (Rs.1,95,000/- x 1/3rd)	**Rs.65,000/-**
3.	Annual Loss of Dependency:- (Rs.1,95,000 - Rs.65,000/-)	**Rs.1,30,000/-**
4.	**Total Loss of dependency:- Rs.1,30,000/-x 13** (multiplier)	**Rs.16,90,000/-**

Conventional Heads:

15. The Learned Counsel for the petitioners orally submitted that as the deceased was 48 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 refered 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 fir 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. As per the record, applicant no.1 is the wife of the deceased so she will be entitled for spousal consortium whereas applicant nos.2 to 4 are the children of the deceased in which applicant no.2 is major and so he will not be entitled for filial consortium but applicant nos.3 & 4 are minor therefore they will be entitled for filial consortium.

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***

<u>of 2018 dated 8/12/2021</u> 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 along with medical expenses of total **Rs.1,19,690/-** as per the cash memo and invoice produced vide **Exh.22** and **Exh.39** when the deceased was alive and was receiving treatment.

Sr. No.	Particulars	Amount
1.	Future Loss of dependency	Rs.16,90,000/-
2.	Funeral Expense (20% enhanced)	19,800/-
3.	Loss of Estate (20% enhanced)	19,800/-

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4.	Loss of Spousal Consortium (spouse) (20% enhanced)	52,800/-
5.	Loss of Filial Consortium (minor girl) (20% enhanced)	52,800/-
6.	Loss of Filial Consortium (minor girl) (20% enhanced)	52,800/-
7.	Medical expenses	1,19,690/-
	Total Compensation	**Rs.20,07,690/-**

18. Thus, the claimants are entitled to get a sum of **Rs.20,07,690/-** 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 Eeco car and the same was owned by Opponent No.1 which is evident from the Certificate of Registration produced vide **Mark 4/8** and therefore opponent no.1 cannot escape from the liability of giving compensation to the applicants.

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19.1. 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 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 4/9** 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 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."*

19.2. 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 ts 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 Eeco car 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 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. 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 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 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:

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.20,07,690/- (Rupees Twenty Lakhs Seven Thousand Six Hundred Ninety 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

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among the applicants in the following manner:-

40% : Applicant No.1 i.e. wife of the deceased
20% : Applicant No.2 i.e. son of the deceased
20% : Applicant No.3 i.e. daughter of deceased
20% : Applicant No.4 i.e. daughter of deceased

5) Out of the amount of share payable to the Applicant No.1 & 2, **70%** amount shall be invested as Fixed Deposits in any Nationalized Bank for 5 years named by the applicant nos.1 & 2 and rest **30%** amount of share shall be paid to the applicant nos.1 & 2 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) Since Applicant Nos.3 & 4 are minor, the entire share of award amount which comes on their part

shall be invested in fixed deposit under the guardianship of Applicant No.1 being mother/next friend (only for this purpose) in any nationalized bank of the choice of Applicant No.1 for a period of FIVE YEARS or till the minor applicant has attained majority whichever is later.

8) The applicants shall be entitled for periodical interest on the above Fixed Deposits.

9) 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.

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10) 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:-

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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.**

11) **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.**

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12) **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.**

13) The opponents shall bear their own as well as the cost of the claim petition of the applicants also.

14) 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. //

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