



Received on	18/08/2023
Registered on	18/08/2023
Decided on	10/04/2026
Duration	<u>YY/MM/DD</u> 02/07/23

**BEFORE THE MOTOR ACCIDENT CLAIM TRIBUNAL
(MAIN) AT. BOTAD.**

**M.A.C.P. NO.34/2023 (MAIN) &
M.A.C.P. NO.35/2023**

Exh:109

M.A.C.P. NO.34 OF 2023:-

Keshavbhai Parshotambhai Gadhiya

Age: 56 years, Occupation:Business,

Residing At.Malini Vadi,

Mangalpara, Botad,

Ta./Dist.:Botad.....**Claimant.**

VERSUS

[Fourwheel Car No.RJ-27-CJ-4387]

1. Vikaskumar Rajkumar Sachdev – Driver

Age: 29 years, Occupation:Driving-Labour,

Residing At. 3/F-57, Prabhatnagar,

Sector No.5, Hiran Mangari,

At.Udepur (Rajasthan)

2. Himansu Rajedra Khatvani – Owner

Age: Adult, Occupation:Business,

Residing At. 11, Ambikanagar,

Near Savitratika, Sector No.4,

At. Udepur (Rajasthan).

3. Liberty General Insurance Co.

Address: First Floor, Shriji Complex,

Near Swaminarayan Temple,

Kalavad Road, Rajkot.....**Opponents.**

M.A.C.P. NO.35 OF 2023:-

Suratiben alias Surataben Keshavbhai Gadhiya

Age: 54 years, Occupation:Agriculture/Housework,

Residing At. Malini Vadi,
Mangalpara, Botad,
Ta./Dist.:Botad.....**Claimant.**

VERSUS

[Fourwheel Car No.RJ-27-CJ-4387]

1. Vikaskumar Rajkumar Sachdev – Driver

Age: 29 years, Occupation:Driving-Labour,
Residing At. 3/F-57, Prabhatnagar,
Sector No.5, Hiran Mangari,
At.Udepur (Rajasthan)

2. Himansu Rajedra Khatvani – Owner

Age: Adult, Occupation:Business,
Residing At. 11, Ambikanagar,
Near Savitrivatika, Sector No.4,
At. Udepur (Rajasthan).

3. Liberty General Insurance Co.

Address: First Floor, Shriji Complex,
Near Swaminarayan Temple,
Kalavad Road, Rajkot.....**Opponents.**

Appearance:-

Mr.K.D.Shekh, Learned Advocate for the claimant/s.

Mr.P.V.Bavaliya, Learned Advocate for the opponent Nos.1 & 2.

Mr.N.H.Jhala, Learned Advocate for the opponent No.3 – Ins. Co.

:: COMMON JUDGMENT ::

1. These claim petitions have arisen out of the one and same accident, which took place on dtd.15/01/2021, involving Motorcycle No.GJ-33-A-0781 and Fourwheel Car No.RJ-27-CJ-4387, therefore, consolidated by an order dtd.02/05/2025 below Exh.27 and the evidence has been recorded in the M.A.C.P. No.34/2023. Therefore, these claim petitions are being decided and disposed of by this common judgment.

2. The factual matrix of both the petitions are as under:-

That on dtd.15/01/2021, the claimant - Keshavbhai Parshotambhai Gadhiya (MACP No.34/2023) was riding his motorcycle bearing registration No.GJ-33-A-0781,

accompanied by his wife - Suratiben alias Surataben Keshavbhai Gadhiya (claimant of MACP No.35/2023), who was travelling as a pillion rider. That they were returning from their farm at Village:Turkha to their residence at Botad, proceeding at a slow and moderate speed on the correct side of the road and when they reached near Bholenath Complex at Botad-Gadhada Road, at that time, the opponent No.1 came by driving the fourwheel Car bearing registration No.RJ-27-CJ-4387, owned by opponent No.2 at an excessive speed, rashly and negligently, so as to endanger human life and dashed with the said motorcycle on its rear portion and therefore, they both were sustained grievous injuries. It is stated by the claimants that the accident took place because of sole negligence on part of driver of fourwheel Car bearing registration No.RJ-27-CJ-4387. It is stated that the offence has been registered against the driver of fourwheel Car bearing registration No.RJ-27-CJ-4387 vide C.R.No.11190002210078/2021 before the Botad Police Station, Dist.:Botad.

3. According to the claimant - Keshavbhai Parshotambhai Gadhiya of MACP No.34/2023, he was 56 years old and was earning Rs.4,50,000/- per annum by doing business of clothes in the name and style of Shriji Maching Center in the area of vegetable market at Botad City. The claimant was also having agricultural land bearing Survey No.347/2 and 437/4 situated at village:Turkha, Ta./Dist.:Botad and thereby he was earning Rs.2,00,000/- per annum by doing its administration work. It is stated by claimant that, due to grievous injuries, he was first taken to Patel Hospital and Trauma Center at Botad where he was admitted as an indoor patient. It is stated by claimant that, he sustained injury like radius ulna near wrist of right hand and

also sustained injury on knee of right leg. It is stated by claimant that, he was operated and plate and screw were inserted. It is stated by claimant that due to injuries, he suffered great mental pain, shock and suffering. It is stated by the claimant that, he has spent huge amount towards the treatment, medicines, transportation, special diet, attendant charges etc. It is stated by the claimant that, due to injuries on right hand, he would not be able to do any hard work and he needs support. shock and suffering. Relying upon various heads, the claimant has in all, claimed Rs.6,00,000/- along with the interest at 12% and costs thereof.

4. According to the claimant – Suratiben alias Surataben Keshavbhai Gadhiya of MACP No.35/2023, she was 54 years old and at the time of accident she was healthy and was earning Rs.15,000/- p.m. by doing agricultural work. It is stated by claimant that, due to grievous injuries, she was first taken to Patel Hospital and Trauma Center at Botad, where she was admitted as an indoor patient. It is stated by claimant that, she sustained fracture injury (humerus) on right hand and was operated and plate and screw were inserted. It is stated by claimant that due to injuries, she suffered great mental pain, shock and suffering. It is stated by the claimant that, she has spent huge amount towards the treatment, medicines, transportation, special diet, attendant charges etc. It is stated by the claimant that, due to injuries on right hand, she would not be able to do any hard work and she needs support. Relying upon various heads, the claimant has in all, claimed Rs.2,00,000/- along with the interest at 12% and costs thereof.
5. In pursuance to the notice served to the opponents, the opponent Nos.1 & 2 have appeared through their advocate and

contested the claim petition by filing written statement at Exh.18 in both the petitions. The opponent Nos.1 & 2 have denied each and every averments made in the claim petitions. It is contended that there was no negligence on part of the opponent No.1, but the alleged incident occurred due to the sole negligence on the part of said Motorcyclist. The opponent Nos.1 & 2 have denied age, income, nature of injuries and resultant disablement etc., of the injured claimants. Alternatively, it is submitted that if the Tribunal comes to the conclusion that the claimants are entitled to get compensation, then the same may be ordered against the opponent No.3 as the vehicle was duly insured at the time of accident.

6. The opponent No.3 - Insurance Co., has appeared before the Tribunal and filed its reply to the Claim Petitions at Exh.25 in both the petitions, wherein, the opponent No.3 has generally denied all the allegations and averments made in these Claim Petitions. The age, income, nature of injuries sustained by the claimants and resultant disablement, involvement of vehicle etc., were denied and disputed. It is contended that the opponent No.1 - driver of Car bearing registration No.RJ-27-CJ-4387 was not holding valid and effective driving license at the time of accident and therefore, the opponent No.3 - Insurance Company cannot be held liable to pay compensation to the claimants. On basis of aforesaid defence, the opponent No.3 has prayed to dismiss the claim petitions.
7. The Opponent No.3 - Insurance Company was permitted to contest the claim petitions u/s.170 of the M. V. Act, on all the available grounds by virtue of the order passed below Exh.26 in both claim petitions.
8. On the basis of the pleadings, following issues have been

framed at Exh.28 in MACP No.34/2023 and Exh.37 in MACP No.35/2023 for the determination of the present claim petitions:-

:: ISSUES ::

1. Whether it is proved that the claimant sustained injuries on account of rash or negligent driving on the part of the driver of the vehicles involved in the accident ?
 2. What amount, if any, the claimant is entitled to by way of compensation and from which of the opponents ?
 3. What order ?
9. The finding of this Tribunal on the aforesaid issues are as under for both the claim petitions:
1. In affirmative.
 2. In partly affirmative. As per final order.
 3. As per final order.
10. To prove the claim petition, the claimants have produced the following oral as well as documentary evidences on record:-

Sr. No.	Particulars	Exh.
Oral Evidence:-		
1	Examination-in-chief of claimant of MACP No.34/2023	31
2	Examination-in-chief of claimant of MACP No.35/2023	32
3	Examination-in-chief of witness Hetalben Labshankarbhai Joshi	88
Documentary Evidence:-		
MACP No.34/2023		
1	Certified copy of FIR.	35
2	True copy of panchnama of scene of offence.	36
3	True copy of aadhar card of claimant.	37
4	True copy of pan card of claimant.	38
5	True copy of school leaving certificate of claimant.	39

6	True copy of bank passbook.	40
7	Discharge card.	41
8	True copy of letter of treatment certificate.	43
9	True copy of form No.54.	44
10	True copy of aadhar card of opponent No.1	45
11	Copy of RC Book of offending vehicle No.RJ-27-CJ-4387.	46
12	Copy of insurance policy of offending vehicle.	47
13	Copy of charge-sheet.	48
14	True copy the shops and establishment registration certificate of Botad Nagarpalika.	49
15	True copy of Udyam registration certificate.	50
16	Copy of income tax return acknowledgement – Assessment Year 2021-22	51
17	Copy of computation of total income.	52
18	Copy of income tax return acknowledgement – Assessment Year 2022-23	53
19	Copy of computation of total income.	54
20	Copy of village form No.8-a.	55
21	Copy of village form No.7.	56
22	Copy of village form No.12.	57
23	Copy of village form No.7.	58
24	Copy of village form No.12.	59
25	Disability certificate.	60
26	X-ray of wrist.	61
27	X-ray of wrist.	62
28	Medical bills of Rs.21,125/-	63
MACP No.35/2023		
29	Copy of FIR.	64
30	True copy of panchnama of scene of offence.	65
31	True copy of aadhar card of claimant.	66
32	True copy of pan card of claimant.	67
33	True copy of school leaving certificate of claimant.	68
34	True copy of bank passbook.	69
35	Discharge card.	70
36	X-ray.	71
37	X-ray.	72
38	True copy of letter of treatment certificate.	73

39	True copy of statement of claimant.	74
40	True copy of form No.54.	75
41	True copy of aadhar card of opponent No.1	76
43	Copy of RC Book of offending vehicle No.RJ-27-CJ-4387.	77
44	Copy of insurance policy of offending vehicle.	78
45	Copy of charge-sheet.	79
46	Disability certificate.	80
47	X-ray.	81
48	Photograph of injury after operation.	82
49	Medical bills of Rs.21,036/-	83

11. The opponents Nos. 1 & 2 have produced the copies of insurance policy and RC Book of the offending vehicle and driving licence of the opponent No.1 vide Exhs.91, 92 & 93 respectively. While opponent No.3 – Insurance Co. has produced the copy of insurance policy of offending vehicle and copy of income tax return acknowledgement along with computation of total income of the claimant for the A-Y-2025-26 vide Exhs.100 & 101 respectively.
12. Ld. Advocates for the claimants and opponents have filed the closing pursis at Exhs.89, 94 & 102 respectively declaring that they did not want to lead any further evidence either in support or in their defence in the matter.
13. Ld. Advocate for the claimants has produced the written arguments in both petitions vide Exhs.104 & 105, wherein, he has mainly there is no dispute raised by the opponents regarding the accident, injuries, permanent disabilities, etc. and the relevant documents are admitted by them. It is argued that the accident occurred when the claimants were returning from their field and when they reached on Botad-Gadhada Road, at that time, the opponent No.1 came by driving the white fourwheel Car at an excessive speed, rashly and negligently, so

as to endanger human life and dashed with the said motorcycle on its rear portion and therefore, they both were sustained grievous injuries. He has argued that the claimants have pleaded in their claim petitions as well as stated on oath that the claimant was driving his motorcycle No.GJ-33-A-0781 at a moderate speed and on the correct side of the road and on the way, the driver of fourwheel Car bearing registration No.RJ-27-CJ-4387 came by driving his vehicle at an excessive speed, rashly and negligently and dashed with the motorcycle No.GJ-33-A-0781 on its rear portion. He has argued that looking to the oral as well as documentary evidence on record, the accident took place because of sole negligence on part of driver of fourwheel Car bearing registration No.RJ-27-CJ-4387 and there was no negligence on part of driver of motorcycle No.GJ-33-A-0781 in causing accident.

14. Per contra, Ld. Advocate for the opponent Nos.1 & 2 has produced the written arguments in both petitions vide Exhs.106 & 107, wherein, he has first of all described the incident as per the version of the claimants. He has further argued on the point of negligence and contended that the accident took place because of sole negligence on part of claimant himself. He submitted that F.I.R. has been filed against the opponent No.1 - driver of fourwheel car and after due investigation, the police has charge sheeted the opponent No.1. He submitted that in criminal case also the opponent No.1 – driver of the fourwheel car has been acquitted. He has further submitted that at the time of accident the opponent No.1 is having valid and effective driving licence and the insurance coverage of the offending vehicle was also in existence and, therefore, if any liability may come, is of the opponent No.3 – Insurance

Company.

15. Ld. Advocate for the opponent No.3 – Insurance Co. has produced the written arguments in both petitions vide Exh.108, wherein, he has argued that claimants are not entitled to get amount of compensation from the opponents as stated in the petitions. Further, the FIR was lodged by the claimant himself, and it was filed against an unknown white colour four-wheeler car. In the FIR, she stated that while they were returning on the road, the driver of unknown white colour four-wheeler car came at high speed and knocked them. He has argued that the registration number of the subject vehicle was not mentioned in the FIR, despite the fact that the claimants were conscious at the time of the accident and could have easily provided the vehicle number. These circumstances raise a strong suspicion that the insured four wheeler car has been falsely implicated in order to get compensation from the insurance company. He has argued that there is no description of the vehicle either in the FIR or in the panchnama, although charge sheet was filed against opponent No.1. It is also submitted that, no eyewitness to the accident has been examined. It is further submitted that no direct evidence has been led to establish that the accident was caused by the alleged four wheeler car. In the absence of any eyewitness, it cannot be presumed that the accident occurred due to the involvement of the said vehicle near near Bholenath Complex at Botad-Gadhada Road. It is further submitted that the very involvement of the alleged offending vehicle is not proved, inasmuch as during the examination of the Investigating Officer, the registration number of the vehicle has not been clearly established and the Investigating Officer has also not stated that the number of the alleged car was

revealed in any CCTV footage, and there are material contradictions and omissions in the investigation, thereby rendering the identity of the vehicle doubtful. Moreover, the alleged driver came to be arrested after an unexplained delay of 71 days from the date of the accident, which creates serious doubt about the prosecution story and indicates possibility of false implication after deliberation. It is further submitted that the Investigating Officer has not produced the statement of any independent witness to show that the accident occurred due to the alleged offending car. Accordingly, it is submitted that the claim is liable to be dismissed on the ground of non-involvement of the four wheeler in question.

16. I have heard the Ld. Advocate of both the sides. I have gone through the record. I have also considered the oral and documentary evidence produced on record. I have also gone through and considered the written arguments produced on behalf of the claimants and on behalf of the opponents. The reasons for the issues framed are as under:-

:: REASONS ::

Issue No.1:-

17. 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 i) **Bimla Devi v/s H.R.T.C., reported in AIR 2009 SC 2819** and ii) **Parmeshwari Devi v/s Amir Chand, reported in 2011 (11) SCC 635.1**. It is incumbent on the claimants to prove negligence before owner or insurance *company could be held liable for the compensation because liability of owner of*

vehicle to compensate the victim is based on law of torts. Proof of negligence remains lynch pin to recover compensation. *Negligence means failure to exercise required degree of care expected of a prudent driver. It is a settled principle of law that the burden to prove negligence on the part of driver of offending vehicle is on claimant who asserts it. The claimant has to produce reasonable evidence that the accident took place due to negligence on the part of driver of the vehicle involved in the accident. Thereafter, the burden shifts upon the other side to explain the circumstances under which the accident occurred. In the claim petition for the accident under the Motor Vehicles Act strict proof of negligence is not necessary. Negligence can be established even on the basis of preponderance of probabilities. It is true that sometimes direct evidence to prove the negligence is not available, and therefore, principle of res ipsa loquiter i.e. things speak for themselves is required to be kept in mind at the time of deciding negligence. This settled principle of law has been frequently and exhaustively discussed in various Judgments of the Hon'ble Superior Courts as well as by our own Hon'ble High Court.*

In the backdrop of above discussions, let us now decide whether the driver was negligent in driving the offending vehicle on the date of accident as alleged by the claimants.

18. To prove the case, the claimants have filed their affidavits at Exhs.31 & 32 respectively and thereby, reiterated the averments made in the claim petitions. The claimant – Keshavbhai Parshotambhai Gadhiya of MACP No.34/2023 was cross-examined by the Ld. Advocate for the opponent No.3 on the point of negligence, wherein he stated that at the time of accident, he was riding motorcycle bearing registration No.GJ-

33-A-0781 and was proceeding towards Botad from Turkha and the road was sufficiently wide to allow two vehicles to pass and that a divider existed in the middle of the road. He has denied that both the vehicles collided head-on. He has voluntarily stated that the car hit his motorcycle from behind and he had lodged a complaint about the incident. He has admitted that the registration number of the offending car was not mentioned in the complaint and the charge sheet and panchnama produced in the present claim petition also do not disclose the number of the offending vehicle. He has denied that the car bearing registration No.GJ-27-CJ-4387 involved in the accident has been wrongly stated and this accident happened because he was coming from the wrong side. He has admitted that at the time of accident, he was 58 years old and he is doing a business of clothes in the name and style of Shreeji Matching Center and he is currently supervising his agricultural land and getting the produce from it and he sustained a fracture in his right hand in the said accident. He has denied that he has not suffered any permanent disability. He has admitted that he has not produced the driving licence of the driver of the offending car in the present claim petition and he is still paying income tax and is ready to produce the income tax returns. He has denied that he is giving false facts to get more compensation.

19. The claimant - Suratiben alias Surataben Keshavbhai Gadhiya of MACP No.35/2023 was cross-examined by the Ld. Advocate for the opponent No.3- Insurance Company on the point of negligence, wherein she stated that at the time of accident, she was travelling in the motorcycle bearing registration No.GJ-33-A-0781 and was proceeding towards Botad from Turkha and the road was sufficiently wide to allow two vehicles to pass and

that a divider existed in the middle of the road. She has denied that both the vehicles collided head-on. She has voluntarily stated that the car hit from behind and she had lodged a complaint about the incident. She has admitted that the registration number of the offending car was not mentioned in the complaint and the charge sheet and panchnama produced in the present claim petition also do not disclose the number of the offending vehicle. She has denied that the car bearing registration No.GJ-27-CJ-4387 involved in the accident has been wrongly stated and this accident happened because she was coming from the wrong side. She has admitted that at the time of accident, she was 54 years old and she was assisting her husband in agricultural activities on their land and she continues to do so even at present. She has admitted that she has not produced any evidence to establish her income and she had sustained a fracture injury to her right shoulder in the accident. She has denied that she has not suffered any permanent disability. She has admitted that she has not produced the driving licence of the driver of the offending car in the present claim petition. She has denied that she is giving false facts to get more compensation.

20. The claimants have also examined the Investigating Officer, Ms.Hetalben Labhshankarbai Joshi, whose deposition is recorded at Exh.88. This witness has stated that on dtd.15/01/2021, she was performing her duty as PSI at Botad Police Station and at that time, she has investigated the offence bearing C.R.No.78/2021 registered at Botad Police Station in connection with an accident. During the investigation, the car bearing registration No.RJ-27-CJ-4387 was found to cause accident. During the investigation, they found the involvement

of the driver – Vikaskumar Rajkumar Sachdev of the said car and arrest him and recorded his statement and filed charge-sheet against him before the Court. During the investigation, she has seized the RC Book, insurance policy of the offending car and aadhar card from the driver of the offending car and the driver had not produced his driving licence. She does not remember whether she asked him for his driving licence or not.

- 20.1 This witness was cross-examined by the Ld. Advocate for the opponent Nos.1 & 2, wherein she admitted that the number of the vehicle involved in the accident is not mentioned in the column of brief details of the offence in the charge-sheet filed against the opponent No.1.
- 20.2 This witness was cross-examined by the Ld. Advocate for the opponent No.3 – Insurance company wherein she stated that the vehicle number was not mentioned in the complaint. During the investigation, the vehicle number was revealed on the basis of statements of witness, who was the owner of the vehicle as well as personal informants and eyewitness. She denied that the vehicle number was not disclosed in the statement of any witness and it was revealed from the statement of one Himanshubhai. She admitted that except the owner of the vehicle, no other witness had disclosed the vehicle number in their statements. She admitted that she herself has filled the Form No.54, wherein the vehicle number was not mentioned and the offence was shown as undetected at that time. She denied that she has falsely stated that the vehicle number was revealed from the statement of witness Himanshubhai. She denied that though the present vehicle was not involved in the accident, the false charge sheet has been filed by inserting the vehicle number in an undetected offence.

21. Considering the material available on record, it appears that though the Investigating Officer has not mentioned the number of the offending vehicle in the charge-sheet and Form No. 54, the occurrence of the accident and involvement of the vehicle is otherwise established from the evidence on record. It is a settled principle that the claimants should not suffer due to lapses on the part of the investigating agency. Hence, such omission is not fatal to the claim.
22. The bare perusal of charge-sheet produced vide Exh.48 depicts the fact that the same is laid against the opponent No.1 - driver of Fourwheel Car No.RJ-27-CJ-4387 and the opponent No.1 has not challenged the FIR before any forum that false complaint is lodged against him. The further perusal of the Panchnama of Scene of Offence produced at Exh.36 depicts the fact that the said vehicle was not found lying at the place of accident which clearly means that immediately after causing the accident, the opponent No.1 - Driver ran away from the place of accident which shows the gross negligence on the part of opponent No.1. Thus, all these facts go to show the rash and negligent driving of the driver of the said vehicle. Moreover, the facts of the accident and negligence of the driver of the said vehicle are duly corroborated with the FIR, Panchnama as well as the depositions of the claimants. Moreover, as the charge-sheet is laid against the opponent no.1 i.e. driver of the said fourwheel car, in view of the ratio laid down in the case of *New India Assurance Co. Ltd. Vs. Pazhaniammal*, 2012 ACJ 1370 Karnataka HC that the filing of charge-sheet is sufficient to hold that the alleged accident was caused because of the rash and negligent driving of the driver of the offending vehicle.

23. Ld. Advocate for the claimants submitted that the F.I.R. has been lodged against the driver of car bearing registration No.RJ-27-CJ-4387 vide C.R. No.11190002210078/2021. He stated that panchnama of scene of offence has also been drawn and the police statements of the witnesses have been recorded and after due investigation, the police has filed charge sheet against the driver of car bearing registration No.RJ-27-CJ-4387. He submitted that the charge-sheet has been produced at Exh.79. He has further submitted that it is no doubt true that the Learned Chief Judicial Magistrate, Botad has acquitted the opponent No.1, however, it is cardinal principle of law that only because the driver of an offending vehicle has been acquitted by the criminal Court it would not be sufficient for the Tribunal to hold that at the relevant point of time the accused named in the FIR and charge-sheet was not plying the offending vehicle. In support of my above referred observation, I place reliance on the ratio laid down in the Judgments delivered by the Hon'ble Superior Courts viz. **2014 ACJ 1174**, **2016 ACJ 402 (P&H)**, **2017 ACJ 2140 P&H**, **2018 ACJ 732 (Sik)**, wherein it is held that, only because accused has been acquitted in a criminal case it can not be held that driver of the offending vehicle was not involved in the accident. He submitted that considering the oral as well as documentary evidence, it becomes clear that car bearing registration No.RJ-27-CJ-4387 was involved in the accident and at the time of accident, car bearing registration No.RJ-27-CJ-4387 dashed on rear part of motorcycle and the accident had taken place.
24. It is also pertinent to note that the Car being a bigger and heavy vehicle, it was duty of the Driver to ply his vehicle with utmost care and keeping the safe distance from the other vehicles,

diligence and at the moderate speed. There is no evidence in rebuttal led by the opponents to show that there was also negligence on part of the Driver of Motor-cycle vehicle to some extent. It is cardinal principle of law that the party who asserts the fact that the accident occurred in a particular way, has to prove his case that the accident occurred in a particular way. Here, in the present case, the claimants have proved the case which has been pleaded in the Claim Petition as well as the averments made in the examination-in-chief.

25. At this juncture, I would like to note the opponent - Insurance Company of the said Car has not examined the driver to lead evidence in rebuttal. Therefore, as per the decision of the Hon'ble Gujarat High Court reported in *2001 (2) GCD 1448 (Guj.), Ahmedabad Municipal Transport Service Vs. Hansaben Natvarlal Dabgar*, an adverse inference is required to be drawn against the Driver and Owner. Even, the involvement and negligence of the Driver of the vehicle Car is duly proved from the FIR, Panchnama of Scene of Offence.
26. Considering the above referred facts and circumstances of the case, I hold that the above referred accident occurred because of the sole negligence of the opponent No.1 who was the driver of Fourwheel Car bearing registration No.RJ-27-CJ-4387 at the time of occurrence of the accident. The claimants have produced the disability certificates issued by Dr.Pinakin I. Vora at Exhs.60 & 80 respectively, which are in corroboration to the version of the claimants that they have sustained injuries during the said accident. Thus, the Issue No.1 is answered in affirmative.

Issue No. 2:-**27. MACP NO.34/2023**

As decided here in above, the accident has been taken place on account of rashness and negligent driving on the part of opponent No.1. Now, it is the duty of the Tribunal to award just and reasonable compensation to the claimants.

Income of the Claimant:-

28. So far as the income of the claimant is concerned, he has stated in his affidavit of examination-in-chief vide Exh.31 that, at the time of accident he was 56 years old and was earning Rs.4,50,000/- p.a. by doing business of clothes and was earning Rs.2,00,000/- by supervising his agricultural land. In support of his say, the claimant has produced the Shops and Establishment Registration Certificate (Form-C) of the Botad Nagarpalika vide Exh.49 and Udyam Registration Certificate of Ministry of Micro. Small and Medium Enterprises of the Government of India vide Exh.50. The claimant has produced income tax return acknowledgements along with computation of total income of A.Y.-2021-22 and A.Y.-2022-23 at Exhs.51 to 54. Ld. Advocate for the opponent – Insurance Company has submitted that the income tax return for the A.Y.-2021-22 has been filed on 27/01/2022 and the accident took place on 15/01/2021, which means the income tax return for A.Y.-2021-22 has been filed after the date of accident and, therefore, the same should not be considered. Ld. Advocate for the opponent – Insurance Company has produced income-tax return acknowledgement along with computation of total income of the claimant for the A.Y.-2025-26 at Exh.101, wherein the gross income has been shown as Rs.4,32,144/- and after deducting Rs.12,761/-, the net income of the claimant has been shown as

Rs.4,19,380/-. As per the decision of Hon'ble Apex Court, the last year income tax return requires to be considered for assessing the income of the claimant. Ld. Advocate for the claimant has submitted that the agricultural income of the claimant should be considered. The claimants have produced the village form Nos.8-A, 7, 12 vide Exhs.55 to 59, but he has not adduced any cogent evidence which shows that which type of crops were cultivated and sold by him during the relevant year of the accident and has not produced any evidence to show what income he was getting from the agricultural work. The claimant has neither produced bills for the purchase of seeds and pesticides nor produced the bills for sale of agricultural produce. Therefore, it can be presumed that claimant is still getting the income from agricultural produce as was getting earlier and has no any loss from the sale of agricultural produce because of accident injuries. Therefore, in absence of any evidence, considering the age of the claimant, nature of work he was doing, year of the accident and considering income tax acknowledgement along with computation of total income for the A-Y-2025-26, this Tribunal assess the yearly income of the claimant as **Rs.4,19,380/-** for just compensation.

Age & Multiplier:-

29. It is the case of claimant that he was aged about 56 years and it has also stated in his deposition and to prove the same, the claimant has produced true copies of aadhar card, pan card and school leaving certificate vide Exhs.37, 38 & 39 respectively, wherein the date of birth of the claimant is mentioned as 01/06/1964, while the accident has occurred on 15/01/2021 hence, the claimant's age was 56 years at the time of accident. Accordingly, as per the ratio laid down by the Hon'ble Apex

Court in the case of *Smt. Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr.*, reported in *2010 (1) GLR, 17 NOC 17 (SC)*, the age of the claimant would fall within the age group of 56 to 60 years and the multiplier applicable to the age of the claimant would be 09.

Permanent Disability :

30. To prove the permanent disability, the claimant has produced the Disability Certificate at **Exh.60**, wherein the doctor has assessed permanent partial disability of 19% for his Rt. Upper limb. So the nature of injuries and disablement suffered by the claimant are duly proved and established. However, Ld. Advocate for the insurance company has made no objection endorsement at Exh.29 in claim petition and agreed to consider 09% disability of the claimant body as whole, and therefore the doctor has not been examined. Hence, considering the nature of injury, physical disability, age and avocation of the claimant, it would be just and proper if the functional disability of the claimant is considered as **09%**.

Future Loss of Income:

31. Taking into considering the functional disability of the claimant which is assessed as 09%, his yearly loss of income would come to Rs.37,744/- p.a. [09% of Rs.4,19,380]. As above discussed, considering the age of the claimant, the multiplier of 09 would be applicable, hence, the future economic loss of income would come to **Rs.3,39,696/-** (Rs.37,744/- x 09 multiplier).

Pain, Shock & Sufferings and Sp. Diet, Attendance Charges & Transportation :

32. The claimant has in his examination-in-chief at Exh.31 stated that, due to this accident, he had sustained fracture injury on the

wrist of right hand as well as injury on knee of right leg for which he has taken treatment at Patel Hospital and Trauma Center as an indoor patient where he has undergone surgery. In support thereof he has produced Disability Certificate at Exh.60. On perusal of this document, it clearly shows that the claimant had sustained fracture injury Rt. side. Moreover, on perusal of the said medical papers, it appears that the claimant was being admitted in the Patel Hospital and Trauma Center, Botad from 15/01/2021 to 16/01/2021, where he has been given treatment for his injury. The claimant has claimed towards Pain, Shock & Sufferings, towards Transportation and Attendant Charges. Therefore, looking to the permanent impairment sustained by the claimant due to the said injuries, it is humble view of this Tribunal that claimant has reduced his energy of work. Therefore, in my view, the claimant is entitled to get Rs.10,000/- under the head of Pain, Shock and Sufferings & Rs.5,000/- under the head of Sp. Diet, Transportation and Attendance Charges.

Actual Loss of Income :

33. The claimant has claimed huge amount under the head of actual loss of income. The claimant has produced the discharge card at **Exh.41** and Disability Certificate at **Exh.60**, which shows that the claimant had mainly got injuries on the wrist of right hand and therefore, it may be presumed that the claimant could not have worked for at least for one month. Therefore, the claimant is entitled to get amount of **Rs.34,948/- (Rs.4,19,380/12 X 1 month = Rs.34,948/-)** under the head of Actual Loss of Income.

Medical Expenses :

34. According to averments made in the oral evidence of claimant at Exh.31, he has incurred Rs.23,425/- towards hospital bill,

medicine, reports, etc. It is further stated by the claimant that after discharging from the hospital, he has received treatment as an outdoor patient and incurred expenses. In support of his submissions, the claimant has produced medical bills at Exh.63. Therefore, it is established that the claimant has incurred total amounting to Rs.21,125/- towards medical treatment. Thus, it would be just and proper to award **Rs.21,125/-** towards medical expenses. Thus, the claimant is entitled to get amount of compensation under the following different heads:-

Sr. No.	Particulars	Amount
1	Future loss of Income	Rs.3,39,696.00
2	Actual loss of Income	Rs. 34,948.00
3	Pain, Shock and Suffering	Rs. 10,000.00
4	Attendant charges, Special Diet and Transportation	Rs. 5,000.00
5	Medical Expense	Rs. 21,125.00
Total:-		Rs.4,10,769.00

35. **MACP NO.35/2023**

Income of the claimant :

The claimant has pleaded her income as Rs.15,000/- per month by doing agricultural labour work. To prove the income, the claimant has not produced any clear, cogent and reliable evidence. The claimant has been cross-examined on this point, wherein she has affirmed that she was assisting her husband in agricultural activities on their land. The claimant has affirmed that she has no documentary evidence to show that she was earning Rs.15,000/- p.m. by doing agricultural labour work. Thus, it can be said that the claimant has failed to prove her income by adducing cogent and reliable documentary evidence. When there is no proof of income, income of the deceased

or injured claimant shall be decided by taking into consideration prevalence minimum wages. In case of **Govind Yadav v/s National Insurance Com. Ltd., reported in 2012 ACJ 28 (SC)** in Para No.17 it has been held that when there is no proof of income, income of the deceased or injured claimant shall be decided by taking into consideration prevalence minimum wages. Therefore, considering the year of accident i.e.2021 and the nature of work, this Tribunal assess the income of the claimant **Rs.8,429/- p.m. and Rs.1,01,148/- p.a.**

36. **Age & Multiplier :**

It is averred by the claimant that at the time of accident, she was 54 years old and it has also stated in her deposition and to prove the same, the claimant has produced true copies of aadhar card, pan card and school leaving certificate vide Exhs.66, 67 & 68 respectively, wherein the date of birth of the claimant is mentioned as 01/01/1967, while the accident has occurred on 15/01/2021 hence, the claimant's age was 54 years at the time of accident. Accordingly, as per the ratio laid down by the Hon'ble Apex Court in the case of ***Smt. Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr.***, reported in **2010 (1) GLR, 17 NOC 17 (SC)**, the age of the claimant would fall within the age group of 51 to 55 years and the multiplier applicable to the age of the claimant would be 11.

37. **Permanent Disability :**

To prove the injuries, the claimant has categorically stated in her affidavit at Exh.32 that in the said vehicular accident, she sustained injuries on right hand and was admitted as indoor patient in the Patel Hospital and Trauma Center, Botad and was operated and plate was fixed with the help of screws. The

claimant has produced disability certificate at Exh.80. From the perusal of the said disability certificate, it appears that claimant is having partial permanent disability of 18% for her Rt. upper limb. However, Ld. Advocate for the insurance company has made no objection endorsement at Exh.30 and agreed to consider 09% disability of the claimant body as whole, and therefore the doctor has not been examined. Hence, considering the nature of injury, physical disability, age and avocation of the claimant, it would be just and proper if the functional disability of the claimant is considered as 09%.

38. **Future Loss of Income:**

In the light of the judgment of *Raj Kumar –versus – Ajay Kumar, reported as 2010(12) SCALE 265* and the facts and circumstances of the present case at the time of the accident the claimant was 54 years old and her monthly income has been assessed at Rs.8,429/- per month at the time of the accident. Therefore, in my considered view, it would be fair, reasonable and equitable to award a sum of **Rs.1,00,136/-** ($\text{Rs.8,429/-} \times 12 \times 11 \times 09\% = \text{Rs.1,00,136/-}$) under the head of future loss of income.

39. **Pain, Shock & Sufferings and Sp. Diet, Attendance Charges & Transportation :**

The claimant has in her examination-in-chief at Exh.32 stated that, due to this accident, she had sustained fracture injury on the right hand as well as on the head for which he has taken treatment at Patel Hospital and Trauma Center as an indoor patient where she has undergone surgery. In support thereof she has produced Disability Certificate at Exh.80. On perusal of this document, it clearly shows that the claimant had sustained fracture injury on right hand. Moreover, on perusal of the said

medical papers, it appears that the claimant was being admitted in the Patel Hospital and Trauma Center, Botad from 15/01/2021 to 16/01/2021, where he has been given treatment for her injury. The claimant has claimed towards Pain, Shock & Sufferings, towards Transportation and Attendant Charges. Therefore, looking to the permanent impairment sustained by the claimant due to the said injuries, it is humble view of this Tribunal that claimant has reduced her energy of work. Therefore, in my view, the claimant is entitled to get Rs.10,000/- under the head of Pain, Shock and Sufferings & Rs.5,000/- under the head of Sp. Diet, Transportation and Attendance Charges.

40. **Actual Loss of Income :**

The claimant has claimed huge amount under the head of actual loss of income. The claimant has produced the discharge card at **Exh.70** and Disability Certificate at **Exh.80**, which shows that the claimant had mainly got injuries on the right hand and therefore, it may be presumed that the claimant could not have worked for at least for one month. Therefore, the claimant is entitled to get amount of **Rs.8,429/-** under the head of Actual Loss of Income.

41. **Medical Expenses :**

According to averments made in the oral evidence of claimant at Exh.32, she has incurred Rs.22,498/- towards hospital bill, medicine, reports, etc. It is further stated by the claimant that after discharging from the hospital, she has received treatment as an outdoor patient and incurred expenses. In support of her submissions, the claimant has produced medical bills at Exh.83. Therefore, it is established that the claimant has incurred total amounting to Rs.21,036/- towards medical treatment. Thus, it

would be just and proper to award **Rs.21,036/-** towards medical expenses. Thus, the claimant is entitled to get amount of compensation under the following different heads:-

Sr. No.	Particulars	Amount
1	Future loss of Income	Rs.1,00,136.00
2	Actual loss of Income	Rs. 8,429.00
3	Pain, Shock and Suffering	Rs. 10,000.00
4	Attendant charges, Special Diet and Transportation	Rs. 5,000.00
5	Medical Expense	Rs. 21,036.00
Total:-		Rs.1,44,601.00

42. **Liability:-**

42.1 Ld. Advocate for the insurance company has submitted that, the driver of the Fourwheel Car No.RJ-27-CJ-4387 i.e. opponent No.1 does not have driving licence on the date of accident, and thereby insured had committed breach of policy conditions. The claimants have also in their cross-examination by the Ld. Advocate for the opponent No.3 – Insurance Company has admitted that they have not produced the driving licence of the driver of the car. Hence, opponent No.3 – insurance company has prayed to absolve from its liability to pay compensation to the claimants U/s.149 of M. V. Act.

42.2 At the outset, Ld. Advocate for the claimants has vehemently submitted that, mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the opposite party. There has to be causal relationship between violation and the accident caused. He has further submitted that, order of pay and recover can be passed by the Tribunal if the driver was not holding driving licence at the time of accident. Thus, insurance company cannot be absolved from its liability to pay

compensation to the claimants.

42.3 So far as the dispute regarding driving licence of the driver of offending car i.e. opponent No.1 is concerned, the claimants have not produced driving licence of the car driver i.e. opponent No.1. Thus, it is crystal clear fact that, driver of the offending car i.e. opponent No.1 was not holding any driving licence on 15/01/2021 i.e. the date of accident. Hence, the opponent No.2 – insured had committed breach of policy conditions.

42.4 The decision of the Hon'ble Supreme Court in case of ***Kempaiah v/s S. S. Murthy*** reported in ***2018 (12) SCC 706***, has held by relying upon the decision in the case of ***National Insurance Co. Ltd. v. Swarna Singh and Ors.***, reported in ***2004(3) SCC 297***, to the effect that-

“Disqualification of the driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defence available to the insurer against either the insured or the third parties. Further, it is held that, insurance company has to satisfy the award and thereafter would be at liberty to recover the said amount from the owner of the vehicle.”

42.5 In the present case, opponent No.1 i.e. driver of the offending car was not having driving licence on the date of accident. However, the claimants are the third party and for the breach committed by the owner of the vehicle, claimant cannot be deprived of the compensation. Hence, considering the decisions of the Hon'ble Apex Court in the case of (1) ***National Insurance Co. Ltd. v. Swarna Singh and Ors.***, reported in ***2004(3) SCC 297***; (2) ***Pappu v. Vinod Kumar Lamba*** reported in ***2018(3) SCC 208***; (3) ***Kempaiah v/s S. S. Murthy*** reported in ***2018 (12)***

SCC 706; (4) *Shamanna v. Divisional Manager, The Oriental Insurance Co. Ltd.* reported in **2018(9) SCC 650** and (5) ***Singh Ram v. Nirmala*** reported in **2018(3) SCC 800**, it would be just and proper if the order of pay and recover is passed against insurance company. Therefore, the opponent No.3 – insurance company is directed to pay the amount of compensation to the claimants and thereafter, is at liberty to recover the compensation from the driver and owner of the offending car i.e.opponent Nos.1 & 2.

42.6 In view of above discussion, the present accident had occurred because of sole negligent driving of opponent No.1 involved in the accident. The opponent No.2 was the owner of the fourwheel Car bearing registration No.RJ-27-CJ-4387 at the relevant time is also established from the certificate of registration of the subject vehicle at Exh.46. Further, on perusing insurance policy of fourwheel Car bearing registration No.RJ-27-CJ-4387 at Exh.47, it transpires that the subject vehicle was insured with the opponent No.3 for the period from 26/08/2020 to 25/08/2021. Thus, it was valid insurance contract on 15/01/2021 i.e., the date of accident. Therefore, the claimants are entitled for the compensation from opponent Nos.1&2 and opponent No.3 is directed to pay the awarded amount to the claimants, and in turn, insurance company i.e. opponent No.3 can recover the same from the driver and owner of the offending car i.e. opponent Nos.1 & 2.

43. **Interest:-**

The Hon'ble Supreme Court in case of ***Kum Nazama v Managing Director, NWKRTC reported in 2022 ACJ-2380 decided on 11.11.2021***, has awarded interest at the rate of 8% per annum on the amount of compensation and therefore, it

would be just and proper to award an interest @ 8% per annum on the amount of compensation to the respective claimant/s from the date of claim petitions till realization. Hence, I answer Issue No.2 in the 'partly affirmative' accordingly and for Issue No.3, the following final order is passed:-

ORDER

1. The Motor Accident Claim Petitions are hereby allowed in part with proportionate cost and interest.
2. The claimant in MACP No.34/2023 is entitled to receive a sum of **Rs.4,10,769/- (Rupees Four Lakh Ten Thousand Seven Hundred Sixty Nine Only)** from the **Opponent Nos.1 to 3** together with running interest at the rate of **8% p.a.** from the date of claim petition till realization with proportionate costs. The opponent no.3 - Insurance Company to satisfy the award at first instance and then to recover the same from the opponent nos.1 & 2.
3. The claimant in MACP No.35/2023 is entitled to receive a sum of **Rs.1,44,601/-(Rupees One Lakh Forty Four Thousand Six Hundred One Only)** from the **Opponent Nos.1 to 3** together with running interest at the rate of **8% p.a.** from the date of claim petition till realization with proportionate costs. The opponent no.3 - Insurance Company to satisfy the award at first instance and then to recover the same from the opponent nos.1 & 2.
4. The **Opponents** are directed to deposit in the office of this Tribunal the above amount of award, after deducting the amount of interim compensation, if any, paid u/s.140 of M.V. Act, within one month from the date of this order.
5. On depositing the above amount of award by the said opponents in this Tribunal, the amount of Court Fee Stamp, if

recoverable on the awarded amount be recovered from the awarded amount and the same be taxed as the cost of the petitions.

6. Out of the amount coming to the share of claimants of MACP No.34/2023 & 35/2023, **70%** amount shall be invested in FDR in the name of the claimants in any Nationalized Bank of the choice of the said claimants for a period of 5 years and remaining **30% amount** be paid to the claimants by way of RTGS/NEFT, after due verification.
7. The concerned Bank is directed not to grant any loan, advances or withdrawal against the said FDRs without obtaining prior permission of this Tribunal. However, the respective claimant/s will be at liberty to withdraw the periodical interest accrued on the said FDRs.
8. The original of this judgment shall be kept in MACP No.34/2023 and certified copy thereof shall be kept with the MACP No.35/2023.
9. Award be drawn accordingly.

Signed & Pronounced in the open Court today on 10th April, 2026.

DATE : 10/04/2026
PLACE: BOTAD

(M. J. PARASHAR)
CHAIRMAN,
M.A.C. TRIBUNAL (MAIN),
BOTAD.
CODE NO.GJ00463