GJDH010017402013 GJDH010017412013 GJDJ010020912013

MACP NO.	**141/2013**			**142/2013**			**143/2013**		
Filed On	15.05.2013			15.05.2013			15.05.2013		
Registered On	15.05.2013			15.05.2013			15.05.2013		
Decided On	06.08.2026			06.08.2026			06.08.2026		
Duration	D	M	Y	D	M	Y	D	M	Y
	21	02	13	21	02	13	21	02	13

GJDH010017432013 GJDH010017442013

MACP NO.	144/2013			145/2013		
Filed On	15.05.2013			15.05.2013		
Registered On	15.05.2013			15.05.2013		
Decided On	06.08.2026			06.08.2026		
Duration	D	M	Y	D	M	Y
	21	02	13	21	02	13

सत्यमेव जयते

BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL (MAIN) AT DAHOD

(Presided over by Mr. H. G. VAGHELA

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Motor Accident Claim Petition No.**141/2013**(MAIN)
With
Motor Accident Claim Petition No.**142/2013**
With
Motor Accident Claim Petition No.**143/2013**
With
Motor Accident Claim Petition No.**144/2013**
&
Motor Accident Claim Petition No.**145/2013**

==

M. A. C. Petition No.141/2013
Exh.82

CLAIMANT :-	**Age (Years)**	**Occupation**	**Resident**
Nanduben D/of Nathubhai Bhavsingbhai Bhuriya	35	Labour Work	R/of Patiya, Tal. Garbada, Dist.Dahod.

Claim for Rs.2,00,000/- Under Section 166 of the M. V. Act

M. A. C. Petition No.142/2013
Exh.19

CLAIMANT :-

Kaliben D/of Dineshbhai Ganjibhai Bhuriya-Koli Patel	18	Labour Work	R/of Patiya, Tal. Garbada, Dist. Dahod.

Claim for Rs.2,00,000/- Under Section 166 of the M. V. Act

M. A. C. Petition No.143/2013
Exh.16

CLAIMANT :-

Rekhaben Naval-bhai Bhuriya Koli-Patel	30	Labour Work	R/of Patiya, Tal. Garbada, Dist. Dahod.

Claim for Rs.2,00,000/- Under Section 166 of the M. V. Act

M. A. C. Petition No.144/2013
Exh.16

CLAIMANT :-

Lalitaben W/of Karsan-bhai Ganjibhai Bhuriya-Koli Patel	27	Labour Work	R/of Patiya, Tal. Garbada, Dist. Dahod.

Claim for Rs.2,00,000/- Under Section 166 of the M. V. Act

M. A. C. Petition No.145/2013
Exh.20

CLAIMANT :-

Hinesh Kasnabhai Bhuriya	18	Labour Work	R/of Patiya, Tal. Garbada, Dist. Dahod.

Claim for Rs.2,00,000/- Under Section 166 of the M. V. Act

VERSUS

OPPONENTS :- (Driver, Owner & Insurance Company of Tractor No.GJ-03 CL-6514 & Trolley No.00 GT 92011)

1) Rajubhai Dilipbhai Vyas-Bhavaya	Adult	Driver	Virpur, Jalaram-nagar, Opposite Water Tank, Tal. Jetpur,Dist.Rajkot
2) Bhavanjibhai Lara-bhai Hirpara	Adult	Owner	Virpur, Tal. Jetpur Dist.Rajkot

3) H.D.F.C. ERGO General Insurance -
Insurance Co. Ltd.

APPEARANCES :

Mr. M. I. Madari	:	Ld. Adv. for Claimants in all
Opponent No.1	:	Served & Absent in all
Mr. C. S. Patel	:	Ld. Adv. for Opponent No.2 in All
Mr. S. M. Mohan	:	Ld. Adv. for Opponent No.3 in All HDFC ERGO General Ins. Co. Ltd.

-: <u>COMMON JUDGMENT</u> :-

(1) All these Five claim petitions are arisen out of one and the same accident and filed against the same opponents to recover compensation under Section 166 of the Motor Vehicles Act (herein after referred to as 'the M. V. Act' in short) for accidental injuries sustained by respective claimants. Therefore, vide order dtd.01.01.2025 passed by the then learned M. A. C. Tribunal (Aux), Dahod below Exh.1 & Exh.19, all these claim petitions are consolidated and common evidence has been recorded by treating M.A.C.P.No.141/2013 as leading matter and accordingly, all claim petitions are decided by this common judgment.

(1.1) <u>M. A. C. P. No.141/2013</u> is filed by claimant N**anduben daughter of Nathubhai Bhavsingbhai Bhuriya** to recover compensation of Rs.2,00,000/- from opponent Nos.1, 2 & 3 i.e. the driver, owner and insurance company of Tractor No.GJ-03 CL-6514 & Trolley No.00 GT-92011 for her injuries received in a vehicular accident, which occurred on 17.05.2013.

(1.2) M. A. C. P. No.142/2013 is filed by claimant **Kaliben Dineshbhai Bhuriya** against the same opponents to recover compensation of Rs.1,50,000/- for her injuries received in the same vehicular accident.

(1.3) M. A. C. P. No.143/2013 is filed by claimant **Rekhaben Navalbhai Bhuriya** against the same opponents to recover compensation of Rs.25,000/- for her injuries received in the same vehicular accident.

(1.4) M. A. C. P. No.144/2013 is filed by claimant **Lalitaben Kasnabhai Bhuriya** against the same opponents to recover compensation of Rs.25,000/- for her injuries received in the same vehicular accident.

(1.5) M. A. C. P. No.145/2013 is filed by claimant **Hinesh Kasnabhai Bhuriya** against the same opponents to recover compensation of Rs.1,50,000/- for his injuries received in the same vehicular accident.

(2) The short facts of the claim petition are that, the claimants and their family members were doing labour work for agriculture in farm of opponent No.2 at Virpur. On 17.04.2012 in the morning, they went to the farm situated opposite to Patiya of Kagvad Village by sitting in tractor & trolley of the opponent No.2 and returning in the evening after finishing their labour work at the farm by sitting over the cement bags loaded in the said tractor & trolley. At that time, the opponent No.1 had driven the tractor & trolley in rash and negligent manner and at 19.30

hours, when they were passing opposite Dhanawadi of Virpur on four lane of Porbander-Rajkot, the opponent No.1 abruptly applied the brakes whereby the trolley came to be separated and turned turtle on the road whereby the claimants and others sustained severe injuries on their body. This accident occurred because of speedy and careless driving of the opponent No.1. Therefore, an FIR came to be lodged with Virpur Police Station vide C. R. No.I-15/2012.

(2.1) It is the case of claimants that they sustained injuries in the accident. They were treated in hospital as indoor and outdoor patient and have incurred expenses on medical treatment, attendants, transportation and taking special diets. They were earning Rs.6000/- per month by doing labour work on the day of accident and due to permanent disability sustained because of accidental injuries, they will have to suffer loss of earning in future. It is accordingly urged to award compensation to the claimants for their accidental injuries and to hold the opponents liable to pay compensation to them.

(3) Looking to the record, the opponents were served with notice but the opponent No.1 has neither appeared before the Tribunal nor filed written statement. The opponent No.2 has filed his appearance through learned Advocate Mr. C. S. Patel and filed reply vide Exh.11 in M.A.C.P.No.141/2013 whereby he has called to prove the accidental injuries, brief facts of the accident together with negligence of the opponent No.1 and involvement of Tractor & Trolley in the accident. The age, occupation and income of the claimants are also denied. It is submitted that the

Tribunal if concludes regarding negligence of the opponent No.2, in that circumstances, the offending vehicle was insured with the HDFC ERGO General Insurance Co. Ltd. for the period covering the date of accident, therefore, the opponent No.2 is not liable to pay compensation to the claimants.

(3.1) The opponent No.3 HDFC ERGO General Insurance Co. Ltd. (referred as ‘the Insurance Company’ in short) appeared through learned Advocate Mr. S. M. Mohan and filed written statement vide Exh.15 in M.A.C.P.No.141/2013 (Exh.15 in M.A.C.P.No.142/2013, Exh.12 in M.A.C.P.No.143/2013 & M.A.C.P.No.144/2013 & Exh.15 in M.A.C.P.No.145/2013). The opponent Insurance Company has mainly denied the averments and grounds mentioned in the respective claim petitions for obtaining compensation from the opponent No.3 Insurance Company and raised various contentions challenging the liability of Insurance Company. The age, occupation and income of the claimants stated in respective claim petitions are denied together with accidental injuries of the claimants. The grounds for obtaining compensation from the Insurance Company are also denied and it is contended that the driver of offending vehicle was not holding the valid and effective driving license to drive it. The claim is alleged to be highly excessive and unjust. It is contended that the driver’s name was changed with malafide intention and even-otherwise, the vehicle, though insured as agricultural tractor, was being used as a commercial vehicle for carrying goods for hire & reward, which was not permitted. It is next contended that, the Tractor has seating capacity of only 01 i.e. driver while 05 persons were traveling in the trolley, so, they were unauthorized passengers and in such breach committed by the opponent No.2, the Insurance Company may be exonerated from liability. It is asserted that the driver did not have valid and effective driving license on the day of accident, therefore, the Insurance Company is not liable to pay compensation to the claimants.

(4) The learned Advocate for opponent No.3 Insurance Company preferred an application (Exh.28) commonly in all claim petition to contest the claim petitions on all grounds available under Sec.170 of the M. V. Act, which is granted by this Tribunal vide order dtd.03.06.2026.

(4-A) Looking to the record, an application was filed by the respective claimants u/Sec.140 of the M. V. Act for interim compensation vide Exh.4 in all the claim petitions but all the main claim petitions are being decided by this common Judgment, therefore, the said applications do not deserve to be decided separately and are disposed of accordingly.

(5) It is pertinent to note that minor claimant of M.A.C.P.No.143/13 and M.A.C.P.No.145/13 have become major during pendency of claim petition and vide order dtd.24.06.2026 below Exh.32, necessary amendment has been carried out by the claimants on the respective claim petitions.

(6) During the proceedings of claim petitions, both parties have been given sufficient opportunity to produce their ocular and documentary evidence to prove their case. On behalf of

claimants, following oral and documentary evidence has been produced on record commonly in all the claim petitions.

COMMON ORAL EVIDENCE

Sr. No.	Name of Witness	Exh.
1)	Affidavit of evidence of Nanduben Nathubhai Bhuriya (Claimant of M.A.C.P.No.141/2013)	29
2)	Affidavit of evidence of Devikaben Sunilbhai Parmar (Claimant of M.A.C.P.No.142/2013)	30
3)	Affidavit of evidence of Rekhaben D/of Navalbhai Bhuriya & Wife of Pankajbhai Damor (Claimant of M.A.C.P.No.143/2013)	33
4)	Affidavit of evidence of Lalitaben Kasnabhai Bhuriya (Claimant of M.A.C.P.No.144/2013)	31
5)	Affidavit of evidence of Hineshbhai Kasnabhai Bhuriya (Claimant of M.A.C.P.No.145/2013)	34

COMMON DOCUMENTARY EVIDENCE

Sr. No.	Description of Documents	Exh.
1	Certified copy of F. I. R.	37
2	Certified copy of Panchnama of the spot	38
3	Certified copy of Charge-sheet filed by police	39
4	Photo copy of Insurance Policy of opponent No.3	40
5	Photo copy of Certificate of Registration of Vehicle	41
6	Photo copy of Certificate of Registration of Vehicle	42
7	Photo copy of Driving License of opponent No.1	43
8	Photo copy of Injury Certificate of Claimant Nanduben	44

9	Photo copy of Medical Certificate-1 of Claimant Nanduben	45
10	Photo copy of Medical Certificate-2 of Claimant Nanduben	46
11	Refer Note of Dr.Alwish Kalaria	47
12	Photo copy of Caste Certificate of claimant Nanduben	48
13	Photo copy of Aadhar Card of claimant Nanduben	49
14	Photo copy of Injury Certificate of Claimant Kaliben	50
15	Photo copy of Medical Certificate-1 of Claimant Kaliben	51
16	Photo copy of Medical Certificate-2 of Claimant Kaliben	52
17	Photo copy of Caste Certificate of claimant Kaliben	53
18	Photo copy of Aadhar Card of claimant Kaliben	54
19	Photo copy of Medical Certificate of Claimant Rekhaben	55
20	Photo copy of Injury Certificate-1 of Claimant Rekhaben	56
21	Photo copy of Medical Certificate-2 of Claimant Rekhaben	57
22	Photo copy of Aadhar Card of claimant Rekhaben	58
23	Photo copy of Medical Certificate of Claimant Lalitaben	59
24	Photo copy of Injury Certificate-1 of Claimant Lalitaben	60
25	Photo copy of Medical Certificate-2 of Claimant Lalitaben	61

26	Photo copy of Aadhar Card of claimant Lalitaben	62
27	Photo copy of Medical Certificate of Claimant Hinesh	63
28	Photo copy of Injury Certificate-1 of Claimant Hinesh	64
29	Photo copy of Medical Certificate-2 of Claimant Hinesh	65
30	Photo copy of School Leaving Certificate of claimant Hineshbhai	66
31	Disability Certificate of Claimant Nanduben	68
32	Disability Certificate of Claimant Kariben	70
33	Disability Certificate of Claimant Hinesh	72

(7) The opponent Nos.1 and 2 have remained absent during the recording of claimants' evidence. The learned Advocate for opponent No.3 Insurance Company has cross-examined the claimants. The learned Advocate for claimants has filed closing pursis vide Exh.73. An affidavit is filed by witness of opponent No.3 insurance company namely Nikita Parimal Shah, Sr. Manager vide Exh.75 and she has been cross-examined by the learned Advocate for the claimants. The opponent No.3 Insurance Company has placed on record a certified copy of Insurance Policy of vehicle Trailer vide Exh.78 and closed its evidence by submitting closing pursis vide Exh.79.

(8) Thereafter, the claim petitions were kept for hearing of arguments. The learned Advocate for the claimants has submitted Written Arguments vide Exh.80 whereas the opponent No.3 through its learned Advocate has submitted Written Arguments vide Exh.81, which have been perused by this Tribunal.

(9) Considering the averments of the claim petitions and defence of the opponents, following issues have been framed by the learned M. A. C. Tribunal (Aux), Dahod vide Exh.22 in **M.A.C.P.No.141/2013.**

1. Whether the Petitioner proves that he sustained injuries because of rash and negligent driving of the driver of the vehicle involved in the accident ?
2. Whether the Petitioner is entitled to get the compensation as prayed for or any part thereof from the Respondent ?
3. What order and award ?

(9.1) My findings on the above issues are as under for the following reasons.

1. In the affirmative.
2. As per final order.
3. As per final order.

(10) From the pleadings of the respective parties in M.A.C.P.No.142/2013, following issues have been framed by the learned M. A. C. Tribunal (Aux), Dahod in **M.A.C.P.No. 142/2013.**

1. Whether the Petitioner proves that he sustained injuries because of rash and negligent driving of the driver of the vehicle involved in the accident ?
2. Whether the Petitioner is entitled to get the compensation as prayed for or any part thereof from the Respondent ?
3. What order and award ?

(10.1) My findings on the above issues are as under for the following reasons.

1. In the affirmative.
2. As per final order.
3. As per final order.

(11) From the pleadings of the respective parties in M.A.C.P.No.143/2013, following issues have been framed by the learned M. A. C. Tribunal (Aux), Dahod in **M.A.C.P.No. 143/2013.**

1. Whether the Petitioner proves that he sustained injuries because of rash and negligent driving of the driver of the vehicle involved in the accident ?
2. Whether the Petitioner is entitled to get the compensation as prayed for or any part thereof from the Respondent ?
3. What order and award ?

(11.1) My findings on the above issues are as under for the following reasons.

1. In the affirmative.
2. As per final order.
3. As per final order.

(12) From the pleadings of the respective parties in M.A.C.P.No.144/2013, following issues have been framed by the learned M. A. C. Tribunal (Aux), Dahod in **M.A.C.P.No. 144/2013.**

1. Whether the Petitioner proves that he sustained injuries because of rash and negligent driving of the driver of the vehicle involved in the accident ?
2. Whether the Petitioner is entitled to get the compensation as prayed for or any part thereof from the Respondent ?
3. What order and award ?

(12.1) My findings on the above issues are as under for the following reasons.

1. In the affirmative.
2. As per final order.
3. As per final order.

(13) From the pleadings of the respective parties in M.A.C.P.No.145/2013, following issues have been framed by the learned M. A. C. Tribunal (Aux), Dahod in **M.A.C.P.No. 145/2013.**

1. Whether the Petitioner proves that he sustained injuries because of rash and negligent driving of the driver of the vehicle involved in the accident ?
2. Whether the Petitioner is entitled to get the compensation as prayed for or any part thereof from the Respondent ?
3. What order and award ?

(13.1) My findings on the above issues are as under for the following reasons.

1. In the affirmative.

2. As per final order.

3. As per final order.

(14) During the arguments, learned Advocate Mr. M. I. Madari for the claimants has submitted Written Arguments vide Exh.80 and submitted that the accident took place due to rash and negligent driving of the driver of vehicle Tractor No.GJ-3 CL-6514 & Trolley attached to the said tractor wherein the claimants of all claim petitions herein while traveling as labourer sustained serious injuries. The claimants on the basis of evidence produced on record, have further established that they were authorized travelers on tractor trolley being a labourer. It is submitted that, for income, minimum wages on the day of accident may be considered. Therefore, the claimants are entitled to the compensation as prayed for. It is submitted that, the Insurance Company has failed to prove its defence as to the liability for breach of terms and conditions of policy. Hence, the claimants may be awarded the compensation as prayed for.

(14.1) As against this, learned Advocate Mr. S. M. Mohan for the opponent No.3 the Insurance Company has submitted in Written Arguments that the claimants were traveling on tractor and trolley though tractor had seating capacity of only one and trailer was having no seating capacity, so the claimants were unauthorized and gratuitous passenger. It is contended that the opponent No.1 did not have valid driving license on the day of accident to drive tractor and the driver’s name was changed with malafide intention. It is further contended that the vehicle was being used for commercial purpose without necessary permit and fitness certificate. It has been submitted that there was breach of terms and conditions of policy and therefore, the Insurance Company may be exonerated from liability. He has referred to the following judgments :

1. **New India Assurance Co. Ltd. Vs. Kantibhai Shababhai Parmar (Hon'ble Gujarat High Court) :** R/First Appeal No.2929 of 2009;

2. **New India Insurance Co. Ltd. Vs. Ramanbhai Manubhai Patel (Hon'ble Gujarat High Court) :** R/First Appeal No.2717 of 2004;

3. **United India Insurance Co. Ltd. Vs. Chanchalben Manilal Nathhudas (Hon'ble Gujarat High Court) :** R/First Appeal No.1719 of 2007.

4. **The New India Assurance Co. Ltd. Vs. Ramesh Singh & Others (Hon'ble Madhya Pradesh High Court)** in Misc. Appeal No.66/2004.

-: **REASONS** :-

(15) In order to succeed in the claim petition, the claimants have to prove that the accident happened because of rash and negligent driving on the part of the driver of vehicle involved in the accident. As per the settled position of law by the Honourable Supreme Court in the case of **Bimla Devi V/s. H. R. T. C.** reported in **AIR 2009 SC 2819** and **Parmeshwari Devi V/s. Amir Chand** reported in **2011 (11) SCC 635**, while deciding the point of negligence, the Tribunal has to borne in mind that issue of negligence in claim petition under Section 166 of the M. V. Act is to be decided on the touch stone of preponderance of probability and not beyond the reasonable doubts.

ISSUE NO.1 : <u>Negligence</u> :-

(16) To prove the issue of negligence, claimants namely Nanduben Nathubhai Bhuriya, Devikaben Sunilbhai Parmar, Lalitaben Kasnabhai Bhuriya, Rekhaben Navalbhai Bhuriya and Hineshbhai Kasnabhai Bhuriya have stated in their affidavit of evidence in the form of chief-examination that on 17.05.2012, they were working for agriculture in the farm of opponent No.2 and in the evening, they were returning in Tractor & Trolley of the opponent No.2 by sitting over the cement bags loaded in the tractor trolley and as the opponent No.1 was driving the said tractor & trolley in rash and negligent manner, when the opponent No.1 abruptly applied brakes, the trolley unhooked from the tractor and fell sideways across the road, as a result, they sustained injuries including fracture. It is specifically stated by the claimants that this accident took place because of rash and negligent driving on the part of the opponent No.1.

(17) In cross-examination of the learned Advocate for the opponent No.3 Insurance Company, the claimants admit that they were total 04 to 05 persons traveling in the empty tractor & trolley and they rely on the complaint. It is admitted that, the complaint regarding the incident was lodged with a delay of 03 days. It is denied by the claimants that they were traveling in tractor trolley by paying fare charges.

(18) The claimants have further relied on the documentary evidence, more particularly, the F. I. R. produced vide Exh.37. Looking to the contents of F. I. R. lodged by Navalbhai Nathubhai Bhuriya on 20.05.2012, it reveals that he along-with

his wife Rekhaben and elder sister Nanduben and other persons of his village were on labour work at Virpur and on 17.05.2012, he, his daughter Rekhaben, sister Nanduben, distance sister Lalitaben and niece Kaliben with others were returning after finishing their labour work at the farm of Bhavanjibhai Patel of Virpur by sitting over cement bags in tractor of Bhavanjibhai and it was driven by one Rajubhai Vyas of Virpur and at 19.30 hours, near Dhanawadi Virpur, the driver abruptly applied brakes, as a result, the trolley unhooked from the tractor and fell sideways across the road, hence, he and others sustained injuries and were taken to hospital at Rajkot and treated there. He came to know that the registration number of tractor was GJ-03 CL-6514. Therefore, he lodged F. I. R. against the driver of tractor.

(19) Admittedly, the complaint for the incident dtd.17.05.2012 was lodged before police on 20.05.2012 i.e. delayed by three days. In this regard, looking to the contents, various persons were injured in this accident and were under treatment in hospitals. Looking to the nature of accident with so-many persons got injuries, delay in lodging F.I.R. might have been happened because of engaging of the injured persons and their relatives in treatment of their relatives and for other reasons, which might have happened due to shock after the accident but on the basis of delay of three days in lodging FIR only, all the contents of the FIR cannot be said to be false or fabricated. There is nothing produced on record to show that the delay in lodging FIR was exploited to fabricate a false story or falsely implicate a vehicle or the delay was intentional on the part of the complainant. So, considering the nature of litigation being claim petition filed

under the provision of the M. V. Act, a beneficial legislation, such delay of three days is not fatal to the claim petitions.

(20) Looking to the Panchnama of the spot (Exh.38), the place of incident was on the road leading towards Virpur where a tractor No.GJ-3 CL-6514 was lying on left side of the road and at a distance of 25 feet from the tractor, one unnumbered trolley was lying sideways across the road and cement bags were lying on the road. There were trolley-dragging marks on the road because of unhooking of trolley from the tractor. As per Injury Certificates of the claimants produced on record, there were accidental injuries in the nature of abrasions, fracture etc. sustained to the claimants.

(21) So far as the nature of accident is concerned, the oral evidence of claimants coupled with the FIR, Panchnama of the spot, Injury Certificates of the claimants jointly go to show that when the claimants were traveling by sitting over the cement bags loaded in trolley attached with tractor No.GJ-03 CL-6514, the trolley unhooked from the tractor and fell sideways across the road whereby they sustained injuries. It is fact on record that the tractor & trolley were going on at the time of accident. From these facts, it clearly appears that the driver of tractor & trolley was driving in rash and negligent manner. If he would have driven with enough care and caution and all due care, this incident might have been avoided. The claimants have specifically stated that, the driver of tractor was driving in rash and negligent manner, which remains unrebuttable in their cross-examinations. The FIR and other documents would also go to

show that the driver was driving in rash and negligent manner. No contrary fact is brought on record, so far as the nature of accident is concerned. The driver of tractor has not denied his rash and negligent driving by appearing before the Tribunal or filing written statement on his behalf. Further, it reveals from the certified copy of the charge-sheet produced by the claimants on record vide Exh.39 that the concerned police officer after investigation of this incident had filed charge-sheet against Rajubhai Dilipbhai Vyas i.e. opponent No.1 alleging rash and negligent driving of vehicle Tractor No.GJ-03 CL-6514. This Tribunal while deciding the issue of negligence has taken into consideration the ratio laid down by the Honourable Supreme Court in the recent judgment in the case of **Ranjeet & Another Vs. Abdul Kayam Neb & Anr.** in Civil Appeal arises out of **SLP (Civil) No.10351 of 2019.**

(22) Considering the entire oral as well as documentary evidence on record, the claimants have successfully established that the accident alleged herein took place because of rash and negligent driving of the driver of vehicle Tractor No.GJ-3 CL-6514 with Trolley wherein the claimants while traveling in the trolley sustained injuries. Therefore, I answer the Issue No.1 in the affirmative.

ISSUE NO.2 : <u>Compensation & Liability</u> :-

(23) The next important question is to determine, just, fair and reasonable amount of compensation, which should be awarded to the claimant for having suffered injuries in the accident.

(24) So far as quantum of compensation claimed under various heads by the claimant is concerned, it would be appropriate to refer the facts and circumstances emerging from the record and in view of the evidence placed on record by the claimant before the Tribunal, the question as to what is just compensation to be awarded by this Tribunal being compensation in the petition, is required to be decided.

<u>M. A. C. P. No.141/2013</u>

(25) Claimant Nanduben Nathubhai Bhuriya has stated in her petition that she was aged 35 years and monthly earning Rs.6,000/- from labour work. In affidavit of evidence, the claimant has not stated her exact age on the day of accident, however, as per the affidavit of claimant, she was aged 46 years on the day of making affidavit in Year 2026. It is supported by the copy of her Aadhar Card showing her date of birth as 01.01.1978. No contrary evidence is produced on record. No any other evidence is available on record challenging this age. So, the age of the claimant is taken to be 35 years for deciding the income and multiplier.

(26) As regards the income of claimant, it is stated by the claimant in her affidavit of evidence that she was doing agricultural and contract work at Virpur and earning monthly Rs.9,000/- and Rs.15,000/- from contract work. In cross-examination, she admits that she has not produced any document to show her income. At this stage, if we consider the contents of the F. I. R. and oral evidence of the claimant, at the time of accident, she was traveling on tractor as labourer for agricultural

labour work. So, it can be believed that the claimant was earning her livelihood from agricultural labour work but for showing the exact income, the claimant has not produced any document in support of her say.

(27) It is further stated by the claimant that, due to permanent disability arisen from the accidental injury, she is not able to get such income as she was earning before the accident. This Tribunal has further placed reliance upon the law laid down by the Honourable Apex Court in **Kirti vs. Oriental Insurance Co. Ltd. : [2021 (2) SCC 166].** As per settled principle of law, in absence of any document regarding the income, this Tribunal is required to consider the minimum wages existed on the day of accident. The claimant was a labourer. Therefore, considering the age of the claimant, minimum wages existed on the day of accident with the nature of occupation as labourer being unskilled and all other aspects, the monthly income of the claimant can be considered to be Rs.4500/-.

(28) As per the testimony of claimant Nanduben (Exh.29), in this accident, she sustained injuries, for which she had taken treatment from C.H.C. Virpur and with Dr. Alwish Kalariya (M.D. Physician). She was also treated as indoor patient in Aakar Hospital for four days from 17.05.2012. It is stated that, she suffers from permanent disability arisen out of the accidental injuries, hence, she is not able to do work as she was doing before the accident and suffers loss of income. In support thereof, the claimant has produced on record a copy of Medical Certificate of Pandit Dindayal Upadhyay Medical College &

Hospital, Rajkot vide Exh.46 and MLC Certificate of C. H. C., Virpur (Exh.44) wherein it is certified that she had compound fracture on right foot and abrasions on left leg and right hand, for which, she was primarily treated in the hospital. As per Injury Certificate of Dr. Badal Gorasia of Aakar Hospital (Exh.45), injured Nanduben was treated in the hospital. She was further referred to Dr. Alwish Kalaria and expert opinion was also obtained. As regards the disability, the claimant has produced Disability Certificate of Dr. Dinesh M. Solanki, M. S. (Ortho) of Baheeka Fracture & Orthopedic Hospital, Bardoli vide Exh.68 whereby after examining the claimant and upon calculation of various aspects of evaluation of disability, the Medical Expert has assessed permanent disability of the claimant to the extent of 18.21% of right lower limb, which the parties have agreed to assess @7% for body as a whole vide pursis Exh.67. Hence, the disability is taken at 7% for body as a whole.

(29) Now, considering 7% disability for body as a whole as the per the joint pursis given by the learned Advocates appearing on behalf of the parties and multiplier of 16, the future loss of income will be as follows and it is awarded to the claimant.

Loss of Future Income = Rs.4500/- (monthly income) x 7% disability x 12 months X 16 (multiplier applicable) = **Rs.60,480/-** which is to be granted under the head of future economic loss.

(30) While deciding the compensation under the head of pain, shock and suffering, the Medical Evidence together the period of treatment as inpatient has to be considered. As per medical

evidence, the claimant had accidental injury in the nature of fracture and abrasions and on overall appreciation of evidence together with the nature of injury as well as period of treatment, this Tribunal finds that, it would be just and reasonable to award **Rs.7,500/-** under the head of pain, shock and suffering. Therefore, it is awarded to the claimant accordingly.

(31) So far as the actual loss of income is concerned, the claimant has stated that, due to the injuries, she was not able to work for her livelihood for one year and had lost income for that period. Indoor period is not mentioned in the medical paper. No document is produced by the claimant in support of actual loss of income. As per medical evidence, the claimant had injuries over hand and leg with fracture. She was earning livelihood by doing agricultural work. So, she would have lost her income for reasonable period during which, she would not have worked. Considering these facts, more particularly, nature of injury, according to the opinion of this Tribunal, two months require to be considered for actual loss of income and accordingly, **Rs.9,000/-** (Rs.4500 X 2 months) is awarded to the claimant under the head of actual loss of income.

(32) The claimant has claimed compensation for expenses incurred towards her medical treatment but not produced any Medical Bill or Receipt for payment of medicines. She sustained fracture injury and had taken treatment in private hospital. Looking to the nature of injury and treatment in private hospital, it would be just and reasonable to award **Rs.5,000/-** as compensation to the claimant for the medical treatment expenses.

In absence of proof regarding expenses on transportation, attendants and taking diets as claimed, it would be just and reasonable to award lump-sum **Rs.5,000/-** as compensation under the said heads.

(33) As per above discussion, the amount of compensation comes as follows and the claimant is entitled to the following amount of compensation under various heads :

Description	**Amount**
Future loss of income (Rs.4500 X 7% X 12 months X 16 multiplier)	Rs. 60,480/-
For Pain, shock and suffering	Rs. 7,500/-
For Actual Loss of Income	Rs 9,000/-
Medical Expenses	Rs. 5,000/-
Transport, Attendants and Special Diets expenses	Rs. 5,000/-
Total Compensation to be awarded to claimant	**Rs. 86,980/-**

M.A.C.P.No.142/2013

(34) Looking to this claim petition, claimant Kaliben daughter of Dineshbhai Bhuriya has stated her age as 18 years at the time of accident. Claimant Kaliben @ Devikaben Sunilbhai Parmar has stated in her affidavit of evidence that, she is claimant in M.A.C.P.No.142/2013. She has stated her age to be 30 years on the day of making affidavit in Year 2026. In cross-examination, she has admitted that, she has not produced any documentary evidence to show her age. Looking to the copy of her Aadhar

Card (Exh.54), her date of birth is shown as 07.09.1995. Therefore, on the day of accident i.e. 17.05.2012, she would have been aged 16 years, 08 months and 10 days on the day of accident and the same age of the claimant is taken for calculating the amount of compensation.

(35) As per above discussion, injured victim Kaliben was a minor at the time of accident. For income of a minor in injury case, the Honourable Supreme Court in the case of **Hitesh Nagjibhai Patel Vs. Bababhai Nagjibhai Rabari & Anr.** reported in **2025 INSC 1070** has held in Para-(15) as under :

> *"15. For the purpose of emphasis, it is again clarified here that when a Tribunal or the High Court in appeal, is concerned with the case involving a child having suffered injury or having passed away, the calculation of loss of income necessarily has to be made on the matric of minimum wages payable to a skilled worker in the respective State at the relevant point of time. ...."*

(36) Following the principle laid down by the Honourable Supreme Court in the above referred case, the monthly income of the minor claimant requires to be considered on the basis of Minimum Wages existed on the day of accident. In the case on hand, while deciding the income of the claimant in absence of any supporting evidence or document and considering the minor age of the claimant, minimum wages existed on the day of accident with the nature of occupation as labourer being unskilled and all other aspects, this Tribunal takes the monthly income of the claimant to be Rs.4,500/- for the assessment of

compensation under the future economic loss and actual loss of income.

(37) As per the testimony of claimant Kaliben @ Devikaben (Exh.30), in this accident, she sustained severe injuries including fracture and for that, she was primarily treated in C. H. C. Virpur and thereafter, she had taken treatment with Dr. Alwish Kalariya, M. D. Physician at Aakar Hospital for four days from 17.05.2012. It is stated that, she had received treatment in hospital and because of accidental injuries, she suffers permanent disability, as such, she is no longer able to work as she did before the accident and her working capacity is declined. She suffers difficulties in daily routine activities. In support thereof, the claimant has produced on record copy of Medical Certificate of Pandit Dindayal Upadhyay Medical College & Hospital, Rajkot vide Exh.52 and Injury Certificate of C. H. C., Virpur vide Exh.50 certifying that, injured Kaliben had abrasions over right side of face and right side of chest; contusion and abrasions over right wrist and both knees of legs, for which, she was treated in the hospital and referred to higher center. As per Injury Certificate of Dr. Badal Gorasia of Aakar Hospital (Exh.51), injured Kaliben was treated in the hospital for fracture of radius on right side. As regards the disability, the claimant has produced Disability Certificate of Dr. Dinesh M. Solanki, M. S. (Ortho) vide Exh.70 whereby after examining the claimant, the Medical Expert has assessed permanent disability of the claimant to the extent of 27.66% of right lower limb, which the parties have agreed to assess @9% for body as a whole as per pursis Exh.69. Hence, the disability is taken at 9% for body as a whole.

(38) Now, considering 9% disability for body as a whole as the per the joint pursis given by the learned Advocates appearing on behalf of the parties and multiplier of 18 as per the above referred judgment of the Honorable Supreme Court, the future loss of income will be as follows and it is awarded to the claimant.

Loss of Future Income = Rs.4500/- (monthly income) x 9% disability x 12 months X 18 (multiplier applicable) = **Rs.87,480/-** which is to be granted under the head of future economic loss.

(39) While deciding the compensation under the head of pain, shock and suffering, the Medical Evidence together the period of treatment as inpatient has to be considered. As per medical evidence, the claimant had injury of fracture, abrasion and contusion. No indoor period is shown in the medical certificates as produced. Since the nature of injury as grievous, naturally, she would have taken treatment in the hospital as indoor patient and she would have been remained under follow-up treatment for a reasonable period after discharge from the hospital. So, considering the nature of injury, **Rs.10,000/-** is awarded to the claimant under the head of pain, shock and suffering.

(40) So far as the actual loss of income is concerned, it is admitted that the claimant was a minor at the time of accident. So, she cannot be considered to be an earning person and no actual loss of the income requires to be awarded to the claimant.

(41) The claimant has claimed compensation for expenses incurred towards his medical treatment but not produced any medical bill or receipt towards treatment expenses. She was having fracture injury and might have treated as inpatient in hospital. But in absence of bill or receipt, this Tribunal awards **Rs.5,000/-** to the claimant towards medical treatment expenses. Similarly, the claimant has not produced any document to justify the expenses on transportation, attendants and taking special diets. But considering the nature of injury and treatment in hospital at Rajkot, the claimant might have incurred expenses towards such heads. Therefore, it would be just and reasonable to award **Rs.7,500/-** to the claimant under the head of attendants, transportation and taking special diets expenses.

(42) As per above discussion, the amount of compensation comes under various heads as under and the claimant is entitled to the following amount of compensation :

Description	**Amount**
Future loss of income (Rs.4500 X 9% X 12 months X 18 multiplier)	Rs. 87,480/-
For Pain, shock and suffering	Rs. 10,000/-
Medical Expenses	Rs. 5,000/-
Transport, Attendants and Special Diets expenses	Rs. 7,500/-
Total Compensation	**Rs.1,09,980/-**

M.A.C.P.No.143/2013

(43) While deciding the amount of compensation to be awarded to the claimant of this claim petition Rekhaben, it is worthy to

note here that the injured claimant was a minor, as shown in the claim petition and it is also admitted by the claimant in cross-examination.

(44) Claimant Rekhaben, who has become major now, has stated in her affidavit of evidence that she sustained severe injuries and was treated primarily with C. H. C. Virpur and afterwards, she became the patient of Dr. Alwish Kalariya, M. D. Physician at Aakar Hospital for four days. She has further stated that, she had received treatment in hospital and because of accidental injuries, she suffers permanent disability, as such, she is not able to work as normal person. She suffers difficulties in daily routine activities. In support thereof, the claimant has produced on record copy of Injury Certificate of C. H. C., Virpur vide Exh.55 wherein it is certified that, injured Rekhaben was having CLW on right side, abrasion on right ankle & thigh, abrasion on face and left dorsum of hand and wrist, for which, she was taken to and treated in the hospital and referred to higher center. As per Injury Certificate of Dr. Badal Gorasia of Aakar Hospital (Exh.56), injured Rekhaben was treated in the hospital for soft tissue injury on right side. No disability Certificate is produced by the claimant to show that she sustained any disability. So, when there is no disability, no future loss of income requires to be awarded to the claimant. No indoor period is shown in medical papers as produced. Though claimed compensation, the claimant has not produced any documentary evidence or bill or receipt with regard to expenses incurred on her medical treatment, attendants, transportation or taking special diets for speedy recovery.

(45) Having considered the nature of injury, it is but natural that, the claimant would have suffered pain, shock and agony and she might have incurred expenses towards attendants, transportation and taking diets but in absence of documentary evidence, this Tribunal is of the opinion to award lump-sum **Rs.10,000/-** (Rupees Ten Thousand Only) under all heads and as it is just and reasonable amount of compensation in the present case, it is awarded to the claimant.

M.A.C.P.No.144/2013

(46) Claimant Lalitaben Kasnabhai Bhuriya has claimed compensation of Rs.25,000/-for her accidental injuries. In support of her say, she has stated in her affidavit of evidence that, she sustained injuries in this accident, for which, she was primarily treated in C. H. C. at Virpur and thereafter, she was referred to the hospital of Dr. Alwish Kalariya, M. D. Physician at Aakar Hospital where she was treated as indoor patient for four days. She has further stated that, she had received treatment in hospital and because of accidental injuries, she is not able to work as she was doing before the accident and she suffers difficulties in daily routine activities and thereby, she is having permanent disability. In support thereof, the claimant has produced on record copy of Injury Certificate of C. H. C., Virpur vide Exh.59 showing contusion on occipital region, abrasion over left side lumber region and back and abrasion over right leg and face, for which, she was treated in the hospital and referred to higher center. As per Injury Certificate of Dr. Badal Gorasia of Aakar Hospital (Exh.60), injured Lalitaben was treated in the hospital for the above injuries. No disability Certificate is

produced by the claimant to show that she sustained any disability. No indoor period is shown in medical papers as produced. The claimant has claimed compensation under various heads of medical treatment expenses and expenses towards attendants, transportation and taking special diets but she has not produced any medical bill or receipt regarding expenses incurred on her medical treatment.

(47) Considering the nature of injury of the claimant, it is but natural that the claimant would have suffered pain, shock and agony and she might have incurred expenses towards attendants, transportation and taking diets but in absence of documentary evidence, this Tribunal is of the opinion to award lump-sum **Rs.10,000/-** (Rupees Ten Thousand Only) under all heads and as it is just and reasonable amount of compensation in the present case, it is awarded to the claimant.

M. A. C. P. No.145/2013

(48) Claimant Hinesh Kasnabhai Bhuriya has stated in his petition that he was aged 18 years and monthly earning **Rs.6,000/-** from labour work. In affidavit of evidence, the claimant has not stated his exact age on the day of accident, however, as per the affidavit of claimant, he was aged 18 years on the day of making affidavit in Year 2026. In cross-examination, he admits that, he was a minor on the day of accident. So, the claimant is considered to be a minor for the purpose of deciding the amount of compensation under various heads and as discussed herein above, the monthly income of the claimant is taken to be Rs.4500/-.

(49) Claimant Hineshbhai, who has become major now, has stated in his affidavit of evidence that he sustained severe injuries and was treated primarily with C. H. C. Virpur and afterwards, he was treated by Dr. Alwish Kalariya, M. D. Physician at Aakar Hospital for four days. He has further stated that, he had received treatment in hospital and because of accidental injuries, he has sustained permanent disability, as such, he is not able to work as normal person. He suffers difficulties in daily routine activities. In support thereof, the claimant has produced on record copy of Injury Certificate of C. H. C., Virpur vide Exh.63 and Medical Certificate of Pandit Dindayal Upadhyay Medical College & Hospital, Rajkot vide Exh.65. As per these Medical Papers, injured Hinesh had CLW over thigh and fracture of lower end of femur, abrasion on right side of chest and CLW on left side of the scalp with fracture. For these injuries, he was primarily treated in the hospital and referred to higher center. As per Injury Certificate of Dr. Badal Gorasia of Aakar Hospital (Exh.64), injured Hinesh was treated in the hospital for fracture of open Gr-II and shaft femur bone left side.

(50) As regards the disability, the claimant has produced Disability Certificate of Dr. Dinesh M. Solanki, M. S. (Ortho) vide Exh.72 whereby after examining the claimant, the Medical Expert has assessed permanent disability of the claimant to the extent of 38.46% of left lower limb, which the parties have agreed to assess @15% for body as a whole as per pursis Exh.71. Hence, the disability is taken at 15% for body as a whole.

(51) Now, considering 15% disability for body as a whole as the per the joint pursis given by the learned Advocates appearing on behalf of the parties and multiplier of 18 as per the above referred judgment of the Honorable Supreme Court, the future loss of income will be as follows and it is awarded to the claimant.

Loss of Future Income = Rs.4500/- (monthly income) x 15% disability x 12 months X 18 (multiplier applicable) = **Rs.1,45,800/-** which is to be granted under the head of future economic loss.

(52) While deciding the compensation under the head of pain, shock and suffering, the Medical Evidence together the period of treatment as inpatient has to be considered. As per medical evidence, the claimant had injury of two fractures. No indoor period is shown in the medical certificates as produced. Since the nature of injury as grievous, naturally, he would have taken treatment in the hospital as indoor patient and he would have been remained under follow-up treatment for a reasonable period after discharge from the hospital. So, considering the nature of injury, **Rs.15,000/-** is awarded to the claimant under the head of pain, shock and suffering.

(53) So far as the actual loss of income is concerned, it is admitted that the claimant was a minor at the time of accident. So, he cannot be considered to be an earning person and no actual loss of the income requires to be awarded to the claimant.

(54) The claimant has claimed compensation for expenses incurred towards his medical treatment but not produced any medical bill or receipt towards treatment expenses. He was having fracture injuries over two body parts and might have treated as inpatient in hospital. But in absence of bill or receipt, this Tribunal awards **Rs.10,000/-** to the claimant towards medical treatment expenses. Similarly, the claimant has not produced any document to justify the expenses on transportation, attendants and taking special diets. But considering the nature of injury and treatment in hospital at Rajkot, the claimant might have incurred expenses towards such heads. Therefore, it would be just and reasonable to award **Rs.10,000/-** to the claimant under the head of attendants, transportation and taking special diets expenses.

(55) As per above discussion, the amount of compensation comes under various heads as under and the claimant is entitled to the following amount of compensation :

Description	**Amount**
Future loss of income (Rs.4500 X 15% X 12 months X 18 multiplier)	Rs. 1,45,800/-
For Pain, shock and suffering	Rs. 15,000/-
Medical Expenses	Rs. 10,000/-
Transport, Attendants and Special Diets expenses	Rs. 10,000/-
Total Compensation	**Rs. 1,80,800/-**

Liability :-

(56) Having minutely and cautiously analyzed and appreciated the evidence on record, as discussed and decided

herein above, the accident took place because of negligence on the part of the driver of vehicle Tractor & Trolley-Trailer. The claimants have produced on record copy of Driving License of the opponent No.1 vide Exh.43, which shows that he was licensed to drive tractor. On perusal of the copy of Registration Certificate of Vehicle produced vide Exh.41, it reveals that vehicle Tractor No.GJ-3 CL-6514 was on the name of Bawanjibhai Hirpara i.e. opponent No.2. The claimants have further produced a copy of Policy of Trailer vide Exh.40. and a copy of Insurance Policy is also produced by the opponent No.3 Insurance Company vide Exh.78. From these documents, it clearly reveals that a new vehicle Trailer bearing Chassis Number 00GT092011 in the name of opponent No.2 was insured with HDFC ERGO General Insurance Co. Ltd. i.e. opponent No.3 for the period from 17.06.2011 to 16.06.2012 and it covers the date of accident herein i.e. 17.05.2012. So, the Insurance Policy of vehicle Trailer involved in the accident was in force on the day of accident.

(57) So far as the liability is concerned, learned Advocate Mr. S. M. Mohan for the Insurance Company has contended in Written Arguments (Exh.81) that, as per R. C. Book of Tractor, it was having seating capacity of only one i.e. driver and the deceased being gratuitous passenger was not authorized to travel on tractor trolley. It is contended that the driver name of tractor was changed with malafide intention and even, the driver of Tractor was not holding valid and effective driving license on the day of accident. Further, it is contended that vehicle Tractor was used as a commercial vehicle, which was against the terms and

conditions of policy and there was no valid Permit and Fitness Certificate of the vehicle. In such breach of terms and conditions of policy, the Insurance Company is not liable to pay compensation.

(58) It may be noted here that the Insurance Company has raised contention as to the liability and in support thereof, the Insurance Company has filed an affidavit of Senior Manager of Insurance Company - Nikita Parimal Shah vide Exh.75. According to this witness, Seating Capacity of Trailer was nil and no one was allowed to travel on trolley. The claimants were labourer and their risk was not covered under the policy. She states that looking to the FIR and Charge-sheet, it was a case of gratuitous passenger sitting on trailer and as per settled law, the Insurance company is not liable for compensation. It is stated that no extra premium was collected by the insurance company to cover the risk of the deceased and there was breach of terms and conditions of policy.

(59) In cross-examination of the learned Advocate for claimants, this witness has admitted that contract was executed between the insured and insurer. She has no personal knowledge of the accident.

(60) Having considered the rivaled contentions raised on behalf of both sides and evidence produced on record, it is clear that the contention raised as to non-existence of Permit and Fitness Certificate is not proved by the Insurance Company by way of placing cogent evidence on record. Admittedly, no such

documents are produced by the claimants but non-production of the documents would not establish non-existence of such documents on record. According to the opinion of this Tribunal, when Insurance Company raises any contention, it is for the Insurance Company to prove it by cogent oral or documentary evidence, as such, raising of contention or defence itself is not sufficient to prove the defence.

(61) As discussed herein above, the opponent No.1 being the driver of offending tractor was holding driving license to drive Tractor.

(62) It is clear from the evidence that the claimants were traveling in trolley-trailer at the time of accident and due to rash and negligent driving of the opponent No.1, it unhooked from the tractor and turned sideways across the road. Admittedly, no insurance policy of vehicle tractor is produced on record but the claimants have relied on the insurance policy of vehicle trailer attached to the involved tractor.

(63) As per the settled principle of law, vehicle Trailer is generally attached to vehicle tractor and is a part of vehicle Tractor. A Trailer is unpowered and cannot move independently and it is a unified extension of the towing Tractor. In this case, the claimants were traveling in trailer - trolley attached to the tractor at the time of accident. It is established that due to rash and negligent driving of the driver of Tractor i.e. opponent No.1, this accident occurred wherein the claimants sustained injuries. Admittedly, no insurance policy of the Tractor involved in the

accident has been produced by the claimants and they have relied on the policy of Trailer attached to the involved tractor in the accident.

(64) As per the Registration Certificate of vehicle Tractor, it is clear that it was having seating capacity of one i.e. driver. No Registration Certificate or Ownership Document of Vehicle Trailer has been placed by the either parties on record. The existence of the insurance policy of Trailer covering the date of accident is not in dispute between the parties. It is also not disputed that the owner of tractor and trailer was one and same. As mentioned in the policy, the trailer was insured as agricultural vehicle and no gratuitous passenger is allowed to sit in trailer. Further as revealed from the evidence discussed herein above, the vehicle was being used for carrying cement bags, which cannot be said to be an agriculture purpose. The claimants herein have not produced cogent evidence to prove that the vehicle trailer was being used for agricultural purpose and failed to establish that there was no breach on the part of the insured while carrying them along-with cement bags in the trailer. So, the learned Advocate for the Insurance Company has rightly contended that the vehicle trailer was being used for the purpose other than it was permitted under the policy and therefore, the Insurance Company succeeds in its defence that there was breach of terms and condition of policy of the trailer.

(65) So far as the claimants are concerned, admittedly, they were working with the opponent No.2 i.e. owner of tractor and

trailer as labourer and at the time of accident, they were returning from the agricultural farm of the opponent No.2 after doing labour work. Therefore, they were employees of the opponent No.2. It requires to be noted here that the Motor Vehicles Act is a benevolent and social-justice legislation. This Tribunal has gone through and considered the judgments of the Hon’ble High Court of Gujarat referred to by the learned Advocate for the Insurance Company. At the same time, considering the beneficial legislation and its object to provide social justice and relief to road accident victims, this Tribunal is of the opinion to refer the judgment of the Honourable Supreme Court in the case of **The Royal Sundaram Alliance Insurance Co. Ltd. Vs. Smt. Honnamma & Others** reported in **AIR 2025 SC 2641** wherein the learned Tribunal awarded compensation to the claimants being the heirs of deceased, who was traveling in trailer and sustained injuries and died in the accident and held the driver & owner of tractor & trolley, liable to pay compensation and the Hon’ble High Court of Karnataka while enhancing the amount of compensation to be awarded to the claimants, has fastened liability to pay compensation upon the Insurance Company. The Honorable Supreme Court in the appeal has held in Para-(19) as under :

> *“19. For the reasons aforesaid, we do not find any infirmity in the Impugned Order, either with regard to the quantum of compensation awarded or fixation of liability on the insurer-Appellant for the accident. The same shall be paid within two months from today after adjusting whatever has been paid earlier, in terms of Order dated 06.02.2023 passed in the present case.*

> *However, liberty is granted to the Appellant to recover the differential amount (if any), in terms of Paragraph 18 supra i.e., total compensation awarded less the maximum amount payable, contractually or as per law (whichever be the higher amount), by the Appellant, from the Respondent No.4- owner."*

(66) Considering the factual aspect of the case on hand and following the ratio laid down by the Honourable Supreme Court in the above referred case, this Tribunal holds that the Insurance Company can be directed to pay the amount of compensation to the claimants herein with liberty to recover the same from the insured owner of the vehicle tractor and trailer trolley herein in accordance with the judgment of the Honourable Supreme Court in the case of **Oriental Insurance Co. Ltd. Vs. Nanjapan & Ors** reported in **2004(13) SCC 224.** Therefore, the opponent No.3 Insurance Company is directed accordingly. At the same time, the opponent Nos.1 and 2 are also held liable to pay compensation to the claimants.

(67) As regards the rate of interest, following the principle enunciated by the Honourable Supreme Court in the case of **Abati Bezbaruah Vs. Dy. Director General, Geological Survey of India and Another** reported in **(2003) 3 SCC 148** together with the change of policy adopted by the Reserve Bank of India with regard to rate of interest with effect from 01.04.2021, this Tribunal holds that the claimants are entitled to the simple interest on compensation amount @ 9% per annum from the date of filing of claim petition till 31.03.2021 and @ 7% p. a. from 01.04.2021 till payment of awarded amount.

(68) Accordingly, all the points are answered and following order is passed in the interest of justice.

-: **O R D E R** :-

(1) **M. A. C. P. No.141/2013**

(A) The claim petition is partly allowed against the opponents with costs and interest.

(B) The Claimant do recover **Rs.86,980/- (Rupees Eighty Six Thousand Nine Hundred and Eighty Only)** as compensation from the Opponents with proportionate costs and with interest thereon **@ 9% p.a.** from the date of filing of claim petition to dt.31.03.2021 and **@ 7% p.a.** from 01.04.2021 till realization of compensation amount.

(C-1) The Opponents is hereby directed to deposit the above amount of award, after deducting the amount of interim compensation, if any paid under the M. V. Act within one month from the date of this order.

(C-2) The opponent No.3 the HDFC ERGO General Insurance Co. Ltd. in the event of depositing the amount of compensation awarded to the claimant will be entitled to recover the same from the owner insured of vehicle in accordance with the decision in the case of **Oriental Insurance Co. Ltd. Vs. Nanjapan** reported in **(2004) 13 SCC 224.**

(D) On depositing of the above amount of award by the Opponents in this Tribunal, the deficit amount of Court

Fee Stamp, if any, on the awarded amount be deducted first and out of the remaining amount, **70%** amount shall be invested in any of the nationalized bank of the choice of the claimant in fixed deposit receipt for a period of 5 years and remaining **30%** amount shall be paid to the claimant by way of directly crediting in her Bank Account with a nationalized bank through NEFT or RTGS facility after due and proper verification.

(E) The Claimant shall be entitled to get interest payable periodically from her Fixed Deposit, however, she will not be entitled to withdraw any amount from the investment in fixed deposit scheme before maturity or to raise any loan from the said investment, without prior permission of this Tribunal.

(2) **M. A. C. P. No.142/2013**

(A) The claim petition is partly allowed against the opponents with costs and interest.

(B) The Claimant do recover **Rs.1,09,980/- (Rupees One Lac Nine Thousand Nine Hundred and Eighty Only)** as compensation from the Opponents with proportionate costs and with interest thereon **@ 9% p.a.** from the date of filing of claim petition to dt.31.03.2021 and **@ 7% p.a.** from 01.04.2021 till realization of the compensation amount.

(C-1) The Opponents are hereby directed to deposit the above amount of award, after deducting the amount of interim compensation, if any paid under the M. V. Act within one month from the date of this order.

(C-2) The opponent No.3 the HDFC ERGO General Insurance Co. Ltd. in the event of depositing the amount of compensation awarded to the claimant will be entitled to recover the same from the owner insured of vehicle in accordance with the decision in the case of **Oriental Insurance Co. Ltd. Vs. Nanjapan** reported in **(2004) 13 SCC 224.**

(D) On depositing of the above amount of award by the Opponents in this Tribunal, the deficit amount of Court Fee Stamp, if any, on the awarded amount be deducted first and out of the remaining amount, **70%** amount shall be invested in any of the nationalized bank of the choice of the claimant in fixed deposit receipt for a period of 5 years and remaining **30%** amount shall be paid to the claimant by way of directly crediting in her Bank Account with a nationalized bank through NEFT or RTGS facility after due and proper verification.

(E) The Claimant shall be entitled to get interest payable periodically from her Fixed Deposit, however, she will not be entitled to withdraw any amount from the investment in fixed deposit scheme before maturity or to raise any loan from the said investment, without prior permission of this Tribunal.

(3) **<u>M. A. C. P. No.143/2013</u>**

(A) The claim petition is partly allowed against the opponents with costs and interest.

(B) The Claimant do recover **Rs.10,000/- (Rupees Ten Thousand Only)** as compensation from the Opponents with proportionate costs and with interest thereon **@ 9% p.a.** from the date of filing of claim petition to dt.31.03.2021 and **@ 7% p.a.** from 01.04.2021 till realization of the compensation amount.

(C-1) The Opponents are hereby directed to deposit the above amount of award, after deducting the amount of interim compensation, if any paid under the M. V. Act within one month from the date of this order.

(C-2) The opponent No.3 the HDFC ERGO General Insurance Co. Ltd. in the event of depositing the amount of compensation awarded to the claimant will be entitled to recover the same from the owner insured of vehicle in accordance with the decision in the case of **Oriental Insurance Co. Ltd. Vs. Nanjapan** reported in **(2004) 13 SCC 224.**

(D) On depositing of the above amount of award by the Opponents in this Tribunal, the deficit amount of Court Fee Stamp, if any, on the awarded amount be deducted first and the remaining amount shall be paid to the claimant by way of directly crediting in her Bank Account with a nationalized bank through NEFT or RTGS facility after due and proper verification.

(4) **<u>M. A. C. P. No.144/2013</u>**

(A) The claim petition is partly allowed against the opponents with costs and interest.

(B) The Claimant do recover **Rs.10,000/- (Rupees Ten Thousand Only)** as compensation from the Opponents with proportionate costs and with interest thereon **@ 9% p.a.** from the date of filing of claim petition to dt.31.03.2021 and **@ 7% p.a.** from 01.04.2021 till realization of the compensation amount.

(C-1) The Opponents are hereby directed to deposit the above amount of award, after deducting the amount of interim compensation, if any paid under the M. V. Act within one month from the date of this order.

(C-2) The opponent No.3 the HDFC ERGO General Insurance Co. Ltd. in the event of depositing the amount of compensation awarded to the claimant will be entitled to recover the same from the owner insured of vehicle in accordance with the decision in the case of **Oriental Insurance Co. Ltd. Vs. Nanjapan** reported in **(2004) 13 SCC 224.**

(D) On depositing of the above amount of award by the Opponents in this Tribunal, the deficit amount of Court Fee Stamp, if any, on the awarded amount be deducted first and the remaining amount shall be paid to the claimant by way of directly crediting in her Bank Account with a nationalized bank through NEFT or RTGS facility after due and proper verification.

(5) **<u>M. A. C. P. No.145/2013</u>**

(A) The claim petition is partly allowed against the opponents with costs and interest.

(B) The Claimant do recover **Rs.1,80,800/- (Rupees One Lac Eighty Thousand and Eight Hundred Only)** as compensation from the Opponents with proportionate costs and with interest thereon **@ 9% p.a.** from the date of filing of claim petition to dt.31.03.2021 and **@ 7% p.a.** from 01.04.2021 till realization of the compensation amount.

(C-1) The Opponents are hereby directed to deposit the above amount of award, after deducting the amount of interim compensation, if any paid under the M. V. Act within one month from the date of this order.

(C-2) The opponent No.3 the HDFC ERGO General Insurance Co. Ltd. in the event of depositing the amount of compensation awarded to the claimant will be entitled to recover the same from the owner insured of vehicle in accordance with the decision in the case of **Oriental Insurance Co. Ltd. Vs. Nanjapan** reported in **(2004) 13 SCC 224.**

(D) On depositing of the above amount of award by the Opponents in this Tribunal, the deficit amount of Court

Fee Stamp, if any, on the awarded amount be deducted first and out of the remaining amount, **70%** amount shall be invested in any of the nationalized bank of the choice of the claimant in fixed deposit receipt for a period of 5 years and remaining **30%** amount shall be paid to the claimant by way of directly crediting in her Bank Account with a nationalized bank through NEFT or RTGS facility after due and proper verification.

(E) The Claimant shall be entitled to get interest payable periodically from her Fixed Deposit, however, she will not be entitled to withdraw any amount from the investment in fixed deposit scheme before maturity or to raise any loan from the said investment, without prior permission of this Tribunal.

(6) **(A)** In view of the direction of the Honourable Apex Court in the case of **M. R. Krishna Murthy Vs. The New India Assurance Company Limited & Others** in Civil Appeal Nos. 2476-2477 of 2019, in the case of **Tata A.I.G. General Insurance Co. Ltd. Vs. Union of India & Others** in Writ Petition (Civil) No.534 of 2013 and **in Suo Motu Writ Petition (Civil) No(s).7/2024** and as per the judgment of the Hon'ble High Court of Delhi in the case of **Rajesh Tyagi & Ors. Vs. Jaibir Singh & Ors**. in FAO 842/2003 & CM Appl.32859/2017, 41125-41127/2017, 35516-35517/ 2018, 46426/2018, the claimants are directed to produce their bank account details along with either a certificate of the Banker giving all details of their bank accounts including IFS Code or a copy of a canceled

cheque of their bank account with nationalised bank or first page of their Bank Account Passbook which will compulsorily contain photograph of the claimants/victims duly attested by the Bank concerned, within one week from the date of pronouncement of judgment.

(B) The claimants are directed to keep on updating information regarding their Bank Accounts, email id if provided, in case there is any change, with the office of this Tribunal, till the realization of amount of compensation.

7. The Insurance Company and/or such other entities shall deposit the amount as directed in circular dated 19.01.2022 in Account Name : Motor Accident Claim Tribunal, Dahod Account No.40714029534, Ifs Code : SBIN0000368, MICR : 389002021 and on such deposits being made, the Insurance Company and/or such other entities shall submit a letter to the Registry of District Court, Dahod enclosing a copy of the said bank advice, in prescribed format as above, as per which the deposit was made to the bank account of the Claims Tribunal, to enable the Claims Tribunal to keep tab on the deposits made and the MACPs for which they were made, which is a fundamental need for a smooth implementation.

The Payment advice for remittance of compensation is as under :

PAYMENT ADVICE FOR REMITTANCE OF COMPENSATION

From : (Name of Bank)

To : (Name of Court)

We confirm remittance of compensation as follows on instructions of Insurance Company.

1.	M.A.C.P.Number
2.	On the file of (Name of Claims Tribunal)
3.	Place
4.	Date of Award
5.	Amount Deposited

(A) The Insurance Company and/or 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.

8. In view of the judgment delivered by the Division Bench of Hon'ble Gujarat High Court in the case of **Oriental Insurance Co. Ltd. Vs. Chief Commissioner of Income Tax (TDS)** in <u>Special Civil Application No. 4800 of 2021</u>, the interest awarded by the Motor Accident Claims Tribunal U/Sec. 171 of the Motor Vehicle Act, 1988 is not taxable under the Income Tax Act, 1961.

9. Award to be drawn accordingly in all claim petitions.

10. A copy of this judgment be kept with R&P of M.A.C.P.No.142/2013, M.A.C.P.No.143/2013, M.A.C.P. No.144/2013 and M.A.C.P.No.145/2013 and the original be placed in R&P of M.A.C.P.No.141/2013.

11. PDF Copy of this Judgment and Award be sent to the Insurance Company through email.

Signed and pronounced in open Court on this 6th Day of August, 2026.

Dt.06.08.2026 (Harishchandrasinh Gulabsinh Vaghela)

Place : Dahod M. A. C. Tribunal (Main),

Dahod.

(Code No.GJ00590)

DSS, EA

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