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	Duration	Y-03, M-01, D-00



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**IN THE MOTOR ACCIDENT CLAIMS TRIBUNAL (AUXI.) &
2nd ADDITIONAL DISTRICT COURT, KODINAR.**

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Motor Accident Claim Petition No. 2/2023

Exhibit :- _____

Petitioners :- Heirs of decd. Harajbhai Naranbhai Chauhan:-

- 1. Rangaiben Naranbhai Chauhan,**
Age:-86 years, Occupation:-Retired,
- 2. Malaiben Harajbhai Chauhan,**
Age:-57 years, Occupation:-Household,
- 3. Piyushkumar Harajbhai Chauhan,**
Age:-32 years, Occupation:-Agriculture,
- 4. Pragnaben Harajbhai Chauhan,**
W/o. Ashwinbhai Kher,
Age:-30 years, Occupation:-Household,
- 5. Chandreshbhai Harajbhai Chauhan,**
Age:-28 years, Occupation:-Agriculture,

All residing at Gohil-ni-Khan, Ta.:-Kodinar,
District Gir-Somnath.

Vs.

**Respondents :- Motorcycle bearing registration
No. GJ-01-PG-3029 :-**

(1) Driver :- Jetharam Shravanram Bavri,
Age:- 21 years, Occupation:-Carpenter,
Residing at:- Viratnagar,
Near Hanuman Temple,
Kodianr, District Gir-Somnath.

(2) Owner :- Rajnikumar Balubhai Rathod,
Adult, Occupation:- Agriculture,
Residing at:- Zala Street, Sindhaj,
Ta.:-Kodianr, District Gir-Somnath.

(3) Insurance Company :-
Go-Digit General Insurance Co. Ltd.,
Rajkot Business Center No.202,
Akruti Bij Hub,
Near Raiya Telephone Exchange,
150 Ft. Ring road, Rajkot - 360007.

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LD. ADVOCATES FOR THE PARTIES :-

For the Petitioners :- Mr. P. V. Chavda,
For the Respondent No.1 :- Ms. A. R. Jethva,
For the Respondent No.2 :- Mr. A. M. Naqvi,
For the Respondent No.3 :- Mr. V. S. Jethva
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-:: J U D G M E N T ::-

1. The present petitioners being the heirs of deceased Harajbhai Naranbhai Chauhan have filed this petition for getting compensation of Rs.20,00,000/- under the provisions of Section 166 of the Motor Vehicle Act, 1988 (Hereinafter referred in short as “the M. V. Act”).

2. Brief facts of the petition are such that, on 16.02.2023, at about 9:00 O'clock in the night, deceased - Harajbhai Naranbhai Chauhan was returning back towards his home situated at Daxinamurty Society, Kodinar by driving the OREVA power bike in moderate speed in the left side and as per the traffic rules, when he reached near hotel Sunshine, opposite R. N. Vala hospital, on Kodinar-Veraval road, at that time the driver of vehicle Motorcycle bearing registration No. GJ-01-PG-3029 was came by driving his vehicle in full speed, so as to endangering human life and dashed with the deceased Harajbhai Naranbhai Chauhan from behind and caused the accident and due that accident deceased Harajbhai sustained serious and fatal injuries and succumb to the injuries on 17/02/2023. That the said accident was occurred due to the negligence of the driver of vehicle Motorcycle bearing registration No. GJ-01-PG-3029 - i.e. respondent No.1 and complaint was also filed against him vide I - CR. No.11186002230252/2023 with Kodinar Police Station. It is further submitted in the claim petition that at the time of accident, deceased Harajbhai was aged about 59 years old and he was doing the agriculture work and animal husbandry and thereby earned total of Rs.20,000/- per month. That, on account of ultimate death of deceased Harajbhai, the petitioner No.1 has lost her son, the petitioner No.2 has lost her husband, while the petitioners No.3 to 5 have lost their father. Therefore, the claim of the amount of Rs.20,00,000/- under

different heads as compensation with interest at the rate of 12% from the Respondents.

3. Notices have been duly served upon the respondents. The respondent No.1 has appeared before this Tribunal through Ld. Advocate Ms. A. R. Jethva, while the respondent No.2 has appeared before this Tribunal through Ld. Advocate Mr. A. M. Naqvi and filed their reply/objections vide Exh.22 and 23 respectively; wherein they have denied most of the facts as mentioned in the present claim petition and also stated that, the alleged accident was happened due to sole negligence on the part of the deceased himself as he lost the control over his power bike and caused the accident. The respondent No.1 has also submitted that, he purchased the said vehicle Motorcycle No. GJ-01-PG-3029 from the respondent No.2 on 31/12/2022 for Rs.30,000/- and since then he was being the owner and possessor of the said vehicle Motorcycle No. GJ-01-PG-3029, but in the records of R.T.O. it is not transferred in his name and running in the name of respondent No.2. It is also submitted by the respondent No.1 that, as he is resident of out of state(migrant) and he was residing at Kodinar and doing the labour work and therefore the petitioners have filed false case against him and thereby filed false application to obtain the amount of compensation. While, on the other hand, the respondent No.2 has also submitted that, he has sold his Motorcycle No. GJ-01-PG-3029 to the

respondent No.1 on 31/12/2022 for Rs.30,000/- and handed over the possession of the said vehicle Motorcycle No. GJ-01-PG-3029 to the respondent No.1 and he has registered the sale deed/agreement of the said vehicle Motorcycle before the Notary at Kodinar and since then the respondent No.1 is the owner and possessor of the said vehicle Motorcycle No. GJ-01-PG-3029 but in the records of R.T.O. it is not transferred in the name of respondent No.1 and running in his name. It is also submitted by the respondents No.1 and 2 that, the insurance of said vehicle Motorcycle was in effect at the time of alleged accident and therefore the Insurance Company is liable to pay the amount of compensation to the petitioners. Lastly, the respondents No.1 and 2 have prayed to dismiss the present claim petition filed by the petitioners.

4. The respondent No. 3 - Go-Digit General Insurance Co. Ltd. appeared through it's Ld. Advocate Mr. V. S. Jethva and filed written statement vide Exh.25 and thereby, denied most of the statements, averments and allegations leveled against it. It is further submitted that, at the material time of accident, the driver of vehicle Motorcycle No. GJ-01-PG-3029 was not holding valid and effective driving license and thereby violated the provision of the Motor Vehicle Act, 1988 and so under the circumstances, the respondent No. 3 - Insurance Co. Ltd can not be held liable. The Insurance Company has also denied the age and

income of the deceased. It is also submitted that, the deceased himself is the sole responsible person of the occurrence of the, alternatively, the deceased has also contributed for the occurrence of the accident and therefore, percentage of negligence of the deceased may please be determined and the compensation to the tune of negligence of the deceased may please be reduced. It is also submitted that, the claim of the petitioners is more excessive, exorbitant and exaggerated and the petitioners are not entitled for the same from the respondent No.3 - Insurance Company and therefore the present claim petition of the petitioners may be dismissed with costs.

5. It is pertinent to be noted that, on being scrutinized the present matter and records of this claim petition, this Tribunal found that, this matter is suitable for referring for the Mediation and accordingly the same was referred for Mediation, but, the Mediator has reported that the present matter is unsettled in Mediation process. Thereafter, the present claim petition was taken up for further proceedings.
6. In view of the above facts of the case, following issues have been framed at Exh. 27.

:-: I S S U E S :-:

1. Whether the petitioners prove that deceased died because of the rash and negligent driving of the driver of vehicle involved in the accident ?

2. Whether the petitioners prove that they are entitled to get the compensation claimed by them or any part thereof from the respondents ?
 3. What order and award ?
7. The findings of the aforesaid issues are as under.
1. In the Affirmative.
 2. In the Affirmative.
 3. As per final order.
8. The petitioners have produced the following oral as well as documentary evidences.

Sr. No.	PARTICULARS	Exh.
<u>Oral Evidence</u>		
1.	Deposition of the petitioner No.3 - Piyushkumar Harajbhai Chauhan	28
<u>Documentary Evidence</u>		
1.	Copy of Aadhar Card of deceased Harajbhai Naranbhai	37
2.	Copy of village form No.7, 8-A and 12 of the land of revenue survey No. 239/2/paiki-1, situated at village Gohil-ni-khan, Ta. Kodinar.	38
3.	Copies of the bank statements of the bank account of deceased Harajbhai Naranbhai.	39 & 40
4.	Copy of F.I.R.	41
5.	Copy of Inquest Panchnama	42

6.	Copy of Spot Panchnama	43
7.	Copy of P. M. report of the deceased Harajbhai Naranbhai	44
8.	Copy of Form No.54	45
9.	Copy of the Charge-sheet	46
10.	Copy of R. C. Book of vehicle Motorcycle No. GJ-01-PG-3029	47
11.	Copy of Insurance Policy of vehicle Motorcycle No. GJ-01-PG-3029	48

9. The Respondent No.2 has produced following oral evidence.

Sr. No.	PARTICULARS	Exh.
<u>Oral Evidence</u>		
1	Deposition of respondent No.2 - Rajnikumar Balubhai Rathod	56

10. The Respondent No.3 - Insurance Company has produced following oral evidence as well as documentary evidences.

Sr. No.	PARTICULARS	Exh.
<u>Oral Evidence</u>		
1.	Deposition/Affidavit of Ms. Mitsu Rajeshbhai Moradiya, Junior Associate, Go-Digit General Insurance Co. Ltd., (Through Video Conference)	63
2.	Deposition of witness - Mr. Nikhilkumar Jerambhai Gujarati, R.T.O. Inspector, Gir-Somnath District.	67

<u>Documentary Evidence</u>		
1.	Window slips	70 & 71
2.	Copy of the notice issued by the respondent No.3 - Insurance Company to the respondent No.1 - Jetharam Shraavanram Bawari and respondent No.2 - Rajnikumar Balubhai Rathod regarding submitting the true copy of the valid and effective driving license of respondent No.1.	72 & 73
3.	Copy of the Tracking report of the Registered Letter dispatched by the postal department.	74

-:: REASONS ::-

ISSUE NOS. 1 TO 3 :-

- 11.**All these issues are interconnected and interwoven with each other and so, for the sake of convenience, these issues are discussed and decided together.
- 12.**Ld. Advocate Mr. P. V. Chavda appeared on behalf of the petitioners has filed his written argument vide Exh.78; wherein it is contended that, on 16.02.2023, at about 9:00 O'clock in the night, when deceased - Harajbhai Naranbhai Chauhan was returning back towards his home situated at Daxinamurty Society, Kodinar by driving the OREVA power bike in moderate speed in the left side and as per the traffic rules, when he reached near hotel Sunshine, opposite R. N. Vala hospital, on Kodinar-Veraval road, at that time the driver of vehicle Motorcycle bearing registration No.

GJ-01-PG-3029 was came by driving his vehicle in full speed, so as to endangering human life and dashed with the deceased Harajbhai Naranbhai Chauhan from behind and caused the accident and due that accident deceased Harajbhai sustained serious and fatal injuries and succumb to the injuries on 17/02/2023. It is also submitted that, the said accident was occurred due to negligence of the driver of vehicle Motorcycle bearing registration No. GJ-01-PG-3029 - i.e. respondent No.1 and complaint was also filed against him vide I - CR. No.11186002230252/2023 with Kodinar Police Station. It is also submitted that, at the time of accident, deceased Harajbhai was aged about 59 years old and he was doing the agriculture work and animal husbandry and thereby earned total of Rs.20,000/- per month. That, on account of ultimate death of deceased Harajbhai, the petitioner No.1 has lost her son, the petitioner No.2 has lost her husband, while the petitioners No.3 to 5 have lost their father and therefore, the petitioners being the heirs of deceased Harajbhai Naranbhai are entitled to get the amount of Rs.16,00,000/- as compensation under different heads with interest at the rate of 9% from the Respondents. Ld. Advocate Mr. Chavda has also submitted that, as the alleged accident happened due to sole negligence on the part of the driver of vehicle Motorcycle No. GJ-01-PG-3029 - i.e. the respondent No.1 and the respondent No.2 is the owner of said vehicle Motorcycle, which is insured by the

respondent No.3 - Insurance Company at the time of alleged accident and therefore, considering the various judgments of the Hon'ble Supreme Court as well as Hon'ble High Courts regarding "Pay & Recover" the Insurance Company is bound to pay compensation and therefore all the respondents No.1 to 3 are jointly and severally liable to pay Rs. 16,00,000/- as compensation to the petitioners under different heads with interest at the rate of 9% from the date of the present application. In support of his arguments, Ld. Advocate for the petitioners Mr. P. V. Chavda has relied upon the following judgments of the Hon'ble Supreme Court as well as Hon'ble High Courts.

- i. Sunita and Ors. Vs. United India Insurance Co. Ltd., & Ors., Hon'ble Supreme Court, Civil Appeal No. 9538 of 2025.
- ii. K. Nagendra Vs. The New India Insurance Co. Ltd., Hon'ble Supreme Court.
- iii. V. Renganathan & Anr. Vs. The Branch Manager, United India Insurance Co. Ltd., reported in 2022 0 (SC) 1873.
- iv. Bajaj Alliance General Insurance Company Ltd., Vs. Rajadhanasekar and others, The Madurai Bench of Madras High Court, C.M.A. (M.D.) No. 709 of 2025 and C.M.A. (M.D.) No. 11365 of 2025.

13. On the other hand Ld. Advocate Mr. V. S. Jethva appeared on behalf of the respondent No.3 - Insurance Company has also filed his written arguments vide Exh.79; wherein it is mainly contended that, the driver of vehicle Motorcycle No. GJ-01-PG-3029 was not holding any driving license at the time of accident. It is also submitted that, the respondent No.1 has given statement before the Investigating Officer and the police, wherein he has clearly stated that he was not having any driving license at the time of accident. That, the petitioners have produced the Form No.54 at Exh.45, wherein it is mentioned that, the respondent No.1 was not having any driving license at the time of accident. It is also submitted that, the discovery application to produce the driving license is also filed vide Exh.52 and the R.T.O. officer of Gir-Somnath district is also examined vide Exh.66 regarding the driving license of respondent No.1. Further, to prove the defense of policy, the legal officer of respondent No.3 - Insurance Company has also been examined vide Exh.63. It is also submitted that, it is cardinal principal of law that, the burden of proof is on the petitioners to prove the involvement and negligence of the vehicle, but, the petitioners have failed to discharge their burden, while the respondent No.3 successfully prove and discharge the burden to prove that, the driver of vehicle Motorcycle No. GJ-01-PG-3029 was not negligent in the accident and also discharge the burden to prove that, the respondent No.1 was not having any

driving license. It is also submitted that, the accident in question was happened on 16/02/2023, while the present petition filed on 24/03/2023, after the amendment in the Motor Vehicle Act, which was came into effect on 01/04/2022, after amendment of Section 149 of the old Act, there is no scope of order to Pay and Recover to the Insurance Company, hence the liability of the respondent No.3 - Insurance Company may please be exonerated. In support of his arguments, Ld. Advocate Mr. Jethva has relied upon the following case laws/decisions of the Hon'ble Supreme Court as well as the Hon'ble High Courts.

- i. New India Assurance Company Ltd., Vs. Harishbhai Dayabhai Bharanaiya reported in GLR 2019(3) 1749.
- ii. Beli Ram Vs. Rajinder Kumar reported in AIR Online 2020 SC 739.
- iii. Oriental Insurance Company Ltd., Vs. Annemma and others reported in 2019 ACJ 409.
- iv. National Insurance Co. Ltd., Vs. Swaran Singh and others, reported in 2004 ACJ 1.
- v. National Insurance Co. Ltd., Vs. Bharatbhai Bhimjibhai Sonagara, Hon'ble High Court of Gujarat, R/First Appeal No. 2180 of 2012.
- vi. National Insurance Co. Ltd., Vs. Ashokbhai Thobhanbhai Korat, Hon'ble High Court of Gujarat, R/First Appeal No. 2961 of 2014.

- vii. New India Assurance Co. Ltd., Vs. Arjanbhai Hansrajbhai Dawariya and others, Hon'ble High Court of Gujarat, R/First Appeal No. 3599 of 2013.
- viii. National Insurance Co. Ltd., Vs. Hiral Chandrakant Chauhan, Hon'ble High Court of Gujarat, First Appeal No. 3280 of 2013 to 3286 of 2013.
- ix. National Insurance Co. Ltd., Vs. Ashokkumar Thobhanbhai Korat and others, Hon'ble High Court of Gujarat, R/First Appeal No. 2961 of 2014.
- x. Sithara N. S. Vs. Sai Ram General Insurance Co. Ltd., reported in 2025(0) AIJEL - SC 76241.

14. In view of the above rival grievances of the parties to the petition, as to negligence of the driver of the vehicle involved in the accident, liability of the Respondents etc., it is clear that the petitioners have availed the remedy to claim compensation of death of deceased Harajbhai Naranbhai Chauhan, under Section 166 of the M. V. Act. It would be advantageous to refer the relevant provisions of this Section, which reads as under :-

“Section 166 : Application for compensation.

(1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of Section 165 may be made,-

(a) by the person who has sustained the injury; or

(b) by the owner of the property ; or

(c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or

(d) by any agent duly authorized by the person injured or all or any of the legal representatives of the deceased, as the case may be:

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application.

(2) Every application under sub-section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred, or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits or whose jurisdiction the defendant resides, and shall be in such form and contain such particulars as may be prescribed :

Provided that where no claim for compensation under Section 140 is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant.

(3) x x x x

(4) x x x x”

15. Thus, from the conjoint reading of the above provisions and provision of sub-section (1) of the Section 165 of the M. V. Act, it becomes clear that injured or legal representatives of the deceased may make an application for compensation in respect of accident involving the death

of, or bodily injury to, persons arising out of the use of the motor vehicle. Here, in the matter on hand, deceased - Harajbhai Naranbhai Chauhan, died in vehicular accident arising out of the use of the vehicle Motorcycle bearing registration No. GJ-01-PG-3029.

16. Moreover, the vehicular accident was occurred within the territorial jurisdiction of this Tribunal. So, this claim petition of the petitioners is very well maintainable. Thus, bearing in mind the provision of Section 166 of the M. V. Act, in the circumstances of the case as such, it is now for the tribunal to see as to whether the petitioners have succeeded in proving their claim. It is an admitted position of law that the burden of proof to prove the claim including the fault and negligence on the part of the respondents is lying on the shoulder of the claimant of the claim petition. The Hon'ble Supreme Court in the case of *Sunita & Ors. Vs Rajasthan State Road Transport Corporation & Anr.*, reported in *AIR 2019 SC 994*, has held that;

"It is thus well settled that in motor accident claim cases, once the foundational fact, namely, the actual occurrence of the accident, has been established, then the Tribunal's role would be to calculate the quantum of just compensation if the accident had taken place by reason of negligence of the driver of a motor vehicle and, while doing so, the Tribunal would not be strictly bound by the pleadings of the parties. Notably, while deciding cases arising out of

motor vehicle accidents, the standard of proof to be borne in mind must be of preponderance of probability and not the strict standard of proof beyond all reasonable doubt which is followed in criminal cases."

17. The Hon'ble Supreme Court has also considered the issue of degree of burden of proof to prove the claim under the M. V. Act lying on the shoulder of the claimant in the case of ***Bimla Devi and Ors. Vs. Himachal Road Transport Corporation and Ors.***, reported in (2009) 13 SCC 530.

The Hon'ble Supreme Court has held that :

"In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties."

18. In this respect our own the Hon'ble Gujarat High Court in the case of ***The New India Assurance Co. Ltd. Vs. Meenaben Pankajkumar Joshi***, reported in ***MANU/GJ/0797/2007*** has held that :

"Strict rules of evidence, such as proof beyond reasonable doubt in criminal cases and

preponderance of probabilities in civil cases would not apply in the claim proceedings under the Motor Vehicles Act.”

19. So, the legal proposition is now settled as per the principles enunciated by the Hon'ble Apex Court as well as our own the Hon'ble High Court that, the rule of proof of evidence applicable to the petition under the M. V. Act is not strict as applicable in the Criminal and Civil cases.

20. In order to succeed in claim petition, the petitioners have to prove and establish that the accident is occurred because of rash and negligent driving of the offending vehicle involved in the accident and the deceased died due to said accident. The petitioner No.3 - Piyushkumar Harajbhai Chauhan examined vide Exh.28. In his deposition on oath, the petitioner No.3 has deposed that, on 16.02.2023, at about 9:00 O'clock in the night, his father deceased - Harajbhai Naranbhai Chauhan was returning back towards his home situated at Daxinamurty Society, Kodinar by driving the OREVA power bike in moderate speed in the left side and as per the traffic rules, when he reached near hotel Sunshine, opposite R. N. Vala hospital, on Kodinar-Veraval road, at that time the driver of vehicle Motorcycle bearing registration No. GJ-01-PG-3029 was came by driving his vehicle in full speed, so as to endangering human life and dashed with the deceased Harajbhai Naranbhai Chauhan

from behind and caused the accident and due that accident his father deceased Harajbhai sustained serious and fatal injuries and succumb to the injuries on 17/02/2023. He has also deposed that, the said accident was occurred due to negligence of the driver of vehicle Motorcycle bearing registration No. GJ-01-PG-3029 - i.e. respondent No.1 and complaint was also filed against him vide I - CR. No.11186002230252/2023 with Kodinar Police Station. He has also deposed that, at the time of accident, his father deceased Harajbhai was aged about 59 years old and he was doing the agriculture work and animal husbandry and thereby earned total of Rs.20,000/- per month. That, on account of ultimate death of deceased Harajbhai, the petitioner No.1 has lost her son, the petitioner No.2 has lost her husband, while the petitioners No.3 to 5 have lost their father. He has also deposed that, on account of ultimate death of deceased Harajbhai, he has lost his father and being the legal heirs of deceased Harajbhai Naranbhai Chauhan, they are entitled to get the amount of Rs.20,00,000/- from the Respondents.

21.The petitioner No.3 has also been cross-examined by the Ld. Advocate for the respondents No.1 and 2 wherein he has admitted that, he was not seen the alleged accident. The petitioner No.3 has also been cross examined by the Ld. Advocate for the respondent No.3 - Insurance Company but during the cross-examination of the

petitioner No.3 by the Ld. Advocates for the respondents, no any new things reveals.

22.The owner of vehicle Motorcycle bearing registration No. GJ-01-PG-3029 - i.e. respondent No.2 - Rajnikumar Balibhai Rathod has also deposed on oath vide Exh. 56 and stated on oath that, the alleged accident occurred due to the negligence on the part of the deceased himself. He has also deposed on oath that, he has sold his Motorcycle No. GJ-01-PG-3029 to the respondent No.1 on 31/12/2022 for Rs.30,000/- and handed over the possession of the said vehicle Motorcycle No. GJ-01-PG-3029 to the respondent No.1 and he has registered the sale deed/agreement of the said vehicle Motorcycle before the Notary at Kodinar and since then the respondent No.1 is the owner and possessor of the said vehicle Motorcycle No. GJ-01-PG-3029 but in the records of R.T.O. it is not transferred in the name of respondent No.1 and running in his name.

23.The respondent No.2 has been cross-examined by the Ld. Advocate for the petitioners, wherein, he has admitted that, at the time of alleged accident, the said vehicle Motorcycle No. GJ-01-PG-3029 was registered in his name and at the time of accident, the said vehicle Motorcycle was driven by the respondent No.1 - Jetharam Shravanram Bavri and police has also arrested the respondent No.1 for the offence of said accident and also filed the charge-sheet against him.

24. The respondent No.2 has been also cross-examined by the Ld. Advocate for the respondent No.3 - Insurance Company; wherein he has admitted that, the vehicle Motorcycle No. GJ-01-PG-3029 was owned by him and he is having the R. C. Book of said vehicle Motorcycle. He has also admitted that, he has given the said vehicle Motorcycle to the respondent No.1 - Jetharam Shravanram Bavri. He has replied the questions asked by the Ld. Advocate for the respondent No.3 - Insurance Company, wherein he has stated that, the respondent No.1 - Jethram Shravanram Bavri told him that, he is having the driving license but at present the respondent No.1 is not residing here and his native is Rajasthan, therefore, he cannot obtain the driving license of respondent No.1.

25. Having appreciated the above oral evidences of the petitioner No.3 as well as respondent No.2 and other witnesses, it appears that, on 16.02.2023, at about 9:00 O'clock in the night, when deceased - Harajbhai Naranbhai Chauhan was returning back towards his home situated at Daxinamurty Society, Kodinar by driving the OREVA power bike in moderate speed in the left side and as per the traffic rules, when he reached near hotel Sunshine, opposite R. N. Vala hospital, on Kodinar-Veraval road, at that time the driver of vehicle Motorcycle bearing registration No. GJ-01-PG-3029 was came by driving his vehicle in full speed, so as to endangering human life and dashed with the

deceased Harajbhai Naranbhai Chauhan from behind and caused the accident and due that accident, his father deceased Harajbhai sustained serious and fatal injuries and succumb to the injuries on 17/02/2023. That, the complaint was also filed against the respondent No.1 vide I - CR. No.11186002230252/2023 with Kodinar Police Station. and chargesheet is also filed against the respondent No. 1. Having cautiously appreciated the above evidences, it becomes manifest that deceased – Harajbhai Naranbhai Chauhan died in vehicular accident occurred on 16.02.2023, on Kodinar-Veraval road, near hotel Sunshine, opposite R. N. Vala hospital, at about 9:00 o'clock in the night, between the OREVA power bike driven by the deceased Harajbhai and Motorcycle bearing registration No. GJ-01-PG-3029 driven by the respondent No.1.

26.From the credible and trustworthy testimony of the petitioner No.3, it clearly proves that the said accident was occurred due to negligent driving of the driver of the vehicle Motorcycle bearing registration No. GJ-01-PG-3029. As against this credible deposition nothing rebuttal to this fact is came out on record during the cross-examination of the petitioner No.3.

27. Now, on perusal of the FIR produced at Exh.41, it appears that the same has been lodged against the driver of the vehicle Motorcycle - i.e. the respondent No.1 on

17.02.2023 by Piyushbhai Harajbhai Chauhan - i.e. son of deceased Harajbhai Chauhan. Having further verified the contents of the said complaint it evident that specific statement is made in the said complaint that said accident is caused by the driver of vehicle Motorcycle bearing registration No. GJ-01-PG-3029 by driving his vehicle Motorcycle in rash and negligent manner and in excessive speed.

28. The petitioners have also produced Panchnama of the spot of the accident vide Exh.43, which also supports the case of the petitioners. From the contents of the said Panchnama, it divulges that the said accident was occurred on Kodinar-Veraval main road, opposite R. N. Vala Hospital, near hotel Sunshile and both the vehicles - i.e. OREVA POWER BIKE and Motorcycle No. GJ-01-PG-3029 were found lying at the accident place in damaged conditions. Therefore, involvement of vehicle Motorcycle bearing registration No. GJ-01-PG-3029 is established on record.

29. Documentary evidences on record clearly support the version on oath of the petitioner No.3. The petitioners have also produced the copy of chargesheet filed against the present respondent No.1 for the said offence registered with Kodinar Police Station in connection with the said accident vide Exh. 46. The factum of filing of chargesheet against

the driver of the said vehicle Motorcycle bearing registration No. GJ-01-PG-3029 also substantiate that, the said accident was occurred due to negligence on the part of the driver of the said vehicle Motorcycle bearing registration No. GJ-01-PG-3029 - i.e. the Respondent No.1. It is pertinent to be noted that chargesheet against accused person is filed only after detailed investigation conducted by the investigating agency.

- 30.** Moreover, the respondents have also not examined any eye witness to disprove the case of the petitioners. Therefore, the Respondents have miserably failed to prove that the said accident was not occurred due to any fault or negligence on the part of the respondent No.1. So, it is proved that the accident was occurred due to rash and negligent driving of the Respondent No. 1 being driver of vehicle Motorcycle bearing registration No. GJ-01-PG-3029. Further, the petitioners have also produced the certified copy of postmortem report of deceased Harajbhai Naranbhai Chauhan vide Exh.44. From the said document, it is established that, deceased Harajbhai Naranbhai Chauhan died due to vehicular accident. Furthermore, as discussed above the burden of proof to prove the negligence is not as much as strict in comparison to the Civil and Criminal matters, hence, the petitioners have successfully discharged their burden to prove that, the said accident was occurred due to rash and negligent driving of

the driver of the vehicle Motorcycle bearing registration No. GJ-01-PG-3029. As discussed above, it is also proved that the deceased sustained fatal injuries in said vehicular accident occurred on 16.02.2023 and due to said injuries he has been died out of the use of the vehicle Motorcycle bearing registration No. GJ-01-PG-3029. Hence, the **issue No.1 is answered in the affirmative.**

31.Determination of just, fair and reasonable amount of compensation is one of the most important aspect to be considered in the claim petition under the M. V. Act. Ld. Advocate for the petitioner has argued on the point of compensation that, deceased Harajbhai Naranbhai Chauhan was aged about 59 years old and he was doing the agriculture work and animal husbandry and thereby earned total of Rs.20,000/- per month.

32.In support of their above submission regarding the income of deceased - Harajbhai, the petitioners have produced the village Form No.7/12 and 8-A of the agricultural land vide Exh.38, which is running in the name of deceased Harajbhai Naranbhai Chauhan and situated at village Chauhan-ni-Khan of Ta.:-Kodinar, District Gir-Somnath. The petitioners have also produced the copies of the bank statements of the bank account of deceased Harajbhai Naranbhai Chauhan vide Exh.39 and Exh.40. But the petitioners have not produced any cogent and trustworthy

documents to prove exact income of the deceased. On the other hand, no effective cross-examination of the petitioner No.3 has been made by the Ld. Advocates for the Respondents for the aspect of the income of the deceased. Besides, it is not the specific case of the Respondents that the deceased was not doing any work for earning livelihood for himself and for his family. Now, in absence of material evidence on record regarding actual income of the deceased Harajbhai Naranbhai Chauhamn and considering the minimum wages declared by the Government and also considering the age of the deceased, it would be just and reasonable to assess the monthly income of the deceased - Harajbhai as Rs.10,000/- which comes to Rs.1,20,000/- per annum and it would not be at very high side.

33. It is one of the contention of the Ld. Advocate for the petitioners that the prospective income of the deceased should be considered. To resolve the controversy regarding whether an addition as regards the future prospects is to be added while determining the income of the deceased. In the matter on hand, it would be imperative to apply the principles enunciated by the Hon'ble Supreme Court in the decision in the case of *National Insurance Co. Ltd. Vs. Pranay Sethi and others* reported in (2017) 16 SCC 680. The Hon'ble Supreme Court has considered the controversy regarding the issue where the deceased was

self employed or was a person on fixed salary without provision for annual increment, what should be the addition as regards the future prospects. The Hon'ble Supreme Court has culled out the guiding principles in this decision and relevant principles to decide the controversy prevailing in this matter regarding addition of future prospect is required to reproduce here as under :-

“61. In view of the aforesaid analysis, we proceed to record our conclusions:-

(i)(ii)(iii)

(iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.”

34.As discussed herein above, the deceased was self employed and as per the copy of Aadhar Card of deceased Harajbhai Naranbhai Chauhan produced at Exh.37, wherein the date of birth is mentioned as 01/06/1960 and therefore, on the date of the alleged accident - i.e. on 16/02/2023, deceased Harajbhai was aged about 62 years, 8 months and 15 days, hence, the age of the deceased is assessed as 62 years. Therefore, in view of the above settled principles enunciated by the Hon'ble Apex Court in the case of

Pranay Sethi (Supra) the deceased was aged over 60 years, hence, there is no any addition towards future prospects over the age of 60 years. Therefore, the monthly income of the deceased - Harajbhai is considered as Rs.10,000/- which comes to Rs.1,20,000/- per annum.

35. The Hon'ble Supreme Court in case of *Sarla Verma Vs. Delhi Transport Corporation* reported in *2009 A.C.J. 1298* has held that the amount of personal expenses which the deceased would have spent on himself, had he been alive from his monthly income should be determined on the basis of number of dependents. Here, in the present case on hand it appears from the oral as well as documentary evidences that deceased was married and the petitioner No.1 is the mother of deceased, petitioner No.2 is the wife of deceased, while the petitioners No.3 to 5 are children of the deceased and they are dependents of the deceased. So, the number of dependents is five. Hence, as per the principles enunciated by the Hon'ble Supreme Court in the case of *Sarla Verma* (Supra), in the present case 1/4 from the income of the deceased is required to be deducted. Accordingly, the dependency would come to Rs.90,000/- (i.e. Rs.1,20,000/- - Rs.30,000/-). As discussed above, the age of the deceased was 62 years at the time of accident, so, as per the principles articulated by the Hon'ble Supreme Court in the case of *Sarla Verma* (Supra), the

multiplier of 7 will be applicable. Thus, the Loss of dependency would come to Rs.90,000 x 7 = Rs.6,30,000/-. Hence, the petitioners being the heirs of the deceased are entitled to get **Rs.6,30,000/- under the Head of Loss of dependency.**

36.Ld. Advocate Mr. Chavda has also submitted that, the petitioners are also entitled for compensation under various heads. The Hon'ble Supreme Court has considered the issue of entitlement for loss of consortium in the case of *New India Assurance Company Limited Vs. Somwati Sangita and others*. The Hon'ble Supreme Court has considered the issue of entitlement for loss of consortium in this case. The question posed before the Hon'ble Supreme Court was whether it is only the wife who is entitled for consortium or the consortium can be awarded to children and parents also ? To decide the said question, the Hon'ble Supreme Court has considered several decisions of the Hon'ble Supreme Court on the subject of entitlement for loss of consortium in this decision including the decision of the Hon'ble Supreme Court in the case of *National Insurance Co. Ltd. Vs. Pranay Sethi and others* (Supra). The Hon'ble Supreme Court, after analyzing the principles, has held that the judgment of Pranay Sethi cannot be read to mean that it lays down the proposition that the consortium is payable only to the wife.

*The Hon'ble Supreme Court has also held that, the consortium is not limited to spousal consortium and it also includes parental consortium as well as filial consortium. Therefore, the Hon'ble Supreme Court has awarded the amount of Rs. 40,000/- as fixed by the Hon'ble Supreme Court in the case of **Pranay Sethi** (Supra) towards loss of filial consortium.*

37.The Hon'ble Supreme Court in the case of **National Insurance Co. Ltd. Vs. Pranay Sethi and others** (Supra) has held that :

"59.8. Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years."

38. In view of the above principle laid down by the Hon'ble Supreme Court the amount of Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- is fixed by the Hon'ble Supreme Court towards compensation under the conventional heads, namely, loss of estate, loss of consortium and funeral expenses respectively. Therefore, this Tribunal deem it fit to enhance the amount of compensation to be paid under the conventional head at the rate of 10%. Hence, as per the direction of the Hon'ble Supreme Court in the case of

Pranay Sethi (Supra), the petitioners are entitled for Rs.16,500/- towards loss to estate and Rs.16,500/- towards funeral expenses. So far as the grant of consortium to the petitioners is concerned, it appears from the entire records that, the petitioner No.1 is the mother of deceased, petitioner No.2 is the wife of deceased, while the petitioners No.3 to 5 are children of the deceased. Therefore, in view of the above settled principles, all the petitioners are entitled for getting the amount of compensation under the head of loss of filial consortium, spousal consortium and parental consortium. Hence, all the petitioners are entitled to get the amount of **Rs.2,20,000/-** (Rs.44,000/- X 5) for loss of spousal consortium, parental consortium and filial consortium. Thus, in view of the above discussions, the petitioners are entitled for **Rs.8,83,000/-** as compensation for following particulars.

Sr. No.	Particulars.	Amount (Rs.)
1.	Loss of Dependency.	Rs. 6,30,000/-
2.	Loss of Estate.	Rs. 16,500/-
3.	Funeral Expenses.	Rs. 16,500/-
4.	Loss of consortium	Rs. 2,20,000/-
TOTAL		Rs. 8,83,000/-

LIABILITY TO SATISFY THE AWARD:

39.In the present case, it is proved that deceased Harajbhai Naranbhai Chauhan died due to the accident arising out of the use of Motor vehicle i.e. Motorcycle bearing

registration No.GJ-01-PG-3029 and at the time of accident, the said vehicle was driven by the respondent No.1 and the respondent No.1 was responsible for causing the said accident. Further, it also appears from the R. C. Book of said vehicle Motorcycle bearing registration No. GJ-01-PG-3029 that, the respondent No.2 - Rajnikumar Balubhai Rathod is the owner of said vehicle Motorcycle bearing registration No. GJ-01-PG-3029. It also appears from the copy of Insurance Policy of said vehicle Motorcycle vide Exh.48 that, the said vehicle Motorcycle was insured by the respondent No.3 - Go-Digit General Insurance Company Ltd., for the period from 03/04/2022 to 02/04/2023 and the alleged accident was happened on 16/02/2023. Therefore, on the date of accident, the Insurance of vehicle Motorcycle bearing registration No. GJ-01-PG-3029 was in force.

- 40.** It is the foremost contention of the Ld. Advocate Mr. V. S. Jethva appeared on behalf of the respondent No.3 - Insurance Company that, the driver of vehicle Motorcycle No. GJ-01-PG-3029 - i.e. respondent No.1 was not holding any driving license at the time of accident and he has given statement before the Investigating Officer and the police, wherein he has clearly stated that he was not having any driving license at the time of accident. It is also submitted that, the petitioners have produced the Form No.54 at Exh.45, wherein it is mentioned that, the respondent No.1

was not having any driving license at the time of accident. It is also submitted that, the discovery application to produce the driving license is also filed vide Exh.52 and the R.T.O. officer of Gir-Somnath district is also examined vide Exh.66 regarding the driving license of respondent No.1. Further, to prove the defense of policy, the legal officer of respondent No.3 - Insurance Company has also been examined vide Exh.63. It is also submitted that, it is cardinal principal of law that, the burden of proof is on the petitioners to prove the involvement and negligence of the vehicle, but, the petitioners have failed to discharge their burden, while the respondent No.3 successfully prove and discharge the burden to prove that, the driver of vehicle Motorcycle No. GJ-01-PG-3029 was not negligent in the accident and also discharge the burden to prove that, the respondent No.1 was not having any driving license. It is also submitted that, the accident in question was happened on 16/02/2023, while the present petition filed on 24/03/2023, after the amendment in the Motor Vehicle Act, which was came into effect on 01/04/2022, after amendment of Section 149 of the old Act, there is no scope of order to Pay and Recover to the Insurance Company, hence the liability of the respondent No.3 - Insurance Company may please be exonerated. In support of his arguments, Ld. Advocate Mr. Jethva has relied upon various judgments of the Hon'ble Apex Court.

41.Ld. Advocate Mr. P. V. Chavda appeared on behalf of the petitioners has refuted the defence as raised by the Ld. Advocate for the respondent No.3 - Insurance Company and also submitted that, as the alleged accident happened due to sole negligence on the part of the driver of vehicle Motorcycle No. GJ-01-PG-3029 - i.e. the respondent No.1 and the respondent No.2 is the owner of said vehicle Motorcycle, which is insured by the respondent No.3 - Insurance Company at the time of alleged accident and therefore, considering the various judgments of the Hon'ble Supreme Court as well as Hon'ble High Courts regarding "*Pay & Recover*" the Insurance Company is bound to pay compensation to the petitioners. Ld. Advocate Mr. P. V. Chavda for the petitioners has also submitted that the insurance company cannot absolve its liability merely on the ground of no driving licence and the insurance company has to prove that the owner of the vehicle was aware that the driver has no any driving licence. He has further argued that according to statutory liability, in the matter on hand, the insurance company is liable to pay compensation to third party. Ld. Advocate Mr. Chavda has strenuously argued that in such case where the insurance company has raised the defence of driving licence, the Hon'ble Tribunal has ample power to pass an award of compensation according to the principle of "*Pay and Recover.*"

42.I have heard the Ld. Advocates for both the contesting parties at length in this regard and also taken into consideration their written arguments along with the judgments/decisions of the Hon'ble Supreme Court as well as Hon'ble High Courts and also considering the oral as well as documentary evidences produced by both the parties on record.

43.It appears that the Insurance Company has taken the defence under Section 149(2) of the M. V. Act. Sub-section (2) of Section 149 of the M. V Act only enables the insurance company to defend itself in respect of the liability to pay compensation on any of the grounds mentioned in sub-section (2) including that there has been a contravention of the condition excluding the vehicle being driven by any person who is not duly licensed. This bar on the face of it operates on the person insured. As per the principles as culled out by the Hon'ble Supreme Court, mere absence, fake or invalid driving license or disqualification of the driver for driving at the relevant time, are not in themselves defenses available to the insurer against either the insured or the third parties and to avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant

time. As such the insurance company will have to establish that the insured was guilty of an infringement or violation of a promise. The insurer has also to satisfy the Tribunal that such violation or infringement on the part of the insured was willful, if it has not been established that it was the insured who allowed the vehicle to be driven by a person not duly licensed, then the insurance company cannot repudiate its statutory liability under sub-section (1) of Section 149. So, now, it is settled legal position that, such defence that the driver did not have the requisite driving license to drive a particular type of vehicle can certainly be raised by the insurer, but it will be for the insurer to prove that the insured did not take adequate care and caution to verify the genuineness or otherwise of the license held by the driver. Here in the matter on hand, from the evidences available on record, it emanates that, the respondent No.1 - driver of vehicle Motorcycle bearing registration No. GJ-01-PG-3029 was not possessed driving licence. Now, the sole question posed before this Tribunal is whether the Insurance Company can be directed to pay the amount of compensation at the first instance by reserving the liberty or statutory right to recover the same from the owner of the vehicle in accordance with the law. Ld. Advocates for the respective parties have made their contentions and counter contentions regarding power of Tribunal to pass an order of Pay and Recover. Ld. Advocates for the respective parties have placed reliance

upon the various decisions of the Hon'ble Supreme Court as well as our own the Hon'ble High Court to buttress their respective contentions.

44.As per the decision of the Hon'ble Supreme Court in the case of *National Insurance Co. Ltd. Vs. Swaran Singh and others*, reported in *2004 ACJ 1*, the legal position regarding defence raised by the Insurance Company about Driving license of driver of the offending vehicle and power of Tribunal to pass pay and recover order in case of third party liability is very much clear and therefore, the Insurance Company is statutorily liable to pay the amount of compensation to the petitioner at the first instance and then recover as per law from the insured. The Hon'ble Supreme Court has enunciated the guiding principles in this landmark decision in respect to the defence of driving licence, which are required to be considered to substantially adjudicate the controversial issue of this matter, which are as under :

SUMMARY OF FINDINGS:-

The summary of our findings to the various issues as raised in these petitions are as follows:

(i) Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third party risks is a social welfare legislation to extend relief by compensation to victims of

accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.

(ii) Insurer is entitled to raise a defence in a claim petition filed under Section 163 A or Section 166 of the Motor Vehicles Act, 1988 inter alia in terms of Section 149(2)(a)(ii) of the said Act.

(iii) The breach of policy condition e.g., disqualification of driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of section 149, have 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 defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) The insurance companies are, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish 'breach' on the part of the owner of the vehicle; the burden of proof therefor would be on them.

(v) The court cannot lay down any criteria as to how said burden would be discharged, inasmuch as the same would depend upon the facts and circumstance of each case.

(vi) *Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches on the condition of driving licence is/ are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insured under section 149(2) of the Act.*

(vii) *The question as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver, (a fake one or otherwise), does not fulfill the requirements of law or not will have to be determined in each case.*

(viii) *If a vehicle at the time of accident was driven by a person having a learner's licence, the insurance companies would be liable to satisfy the decree.*

(ix) *The claims tribunal constituted under Section 165 read with Section 168 is empowered to adjudicate all claims in respect of the accidents involving death or of bodily injury or damage to property of third party arising in use of motor vehicle. The said power of the tribunal is not restricted to decide the claims inter se between claimant or claimants on one side and insured, insurer and driver on the other. **In the course of adjudicating the claim for compensation and to decide the availability of defence or defences to the insurer, the Tribunal has necessarily the power and jurisdiction to decide disputes inter se between insurer and the insured.** The decision rendered on the claims and disputes interse*

between the insurer and insured in the course of adjudication of claim for compensation by the claimants and the award made thereon is enforceable and executable in the same manner as provided in Section 174 of the Act for enforcement and execution of the award in favour of the claimants.

(x) Where on adjudication of the claim under the Act the tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of section 149(2) read with sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the tribunal. Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the tribunal to the Collector in the same manner under Section 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by sub-section (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the tribunal.

(xi) The provisions contained in sub-section (4) with proviso thereunder and sub-section (5) which are intended to cover specified contingencies mentioned therein to enable the insurer to recover amount paid under the contract of insurance on behalf of the insured can be taken recourse of by the Tribunal and be extended to claims and defences of insurer against insured by relegating them to the remedy before regular court in cases

where on given facts and circumstances adjudication of their claims interse might delay the adjudication of the claims of the victims. For the reasons aforementioned, these petitions are dismissed but without any order as to costs.

- 45.** To encapsulate the above principles authoritatively culled out by the Hon'ble Supreme Court as well as our own the Hon'ble High Court and other Hon'ble High Courts, it is settled law that, the Insurance Company is entitled to raise a defence of no driving license and breach of condition of insurance policy as available under Section 149(2) of the M. V. Act and the claim Tribunal has jurisdiction to decide the controversial issue interse between the insurer and insured and *Where on adjudication of the claim under the Act the tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of section 149(2) of the M. V. Act, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the tribunal.* The principle can be outlined that, it is the statutory right of a third party to recover the amount of compensation so awarded from the insurer and it is for the insurer to proceed against the insured for recovery of the amount in the event there has been violation of any condition of the insurance policy. The Hon'ble Supreme Court as well as our own the Hon'ble

High Court has authoritatively held that the Motor Accident Claim Tribunal has jurisdiction to issue direction to the Insurance Company to first pay the amount of compensation and then recover it from the owner of the vehicle.

46. The Hon'ble Supreme Court in the landmark decision in the case of **Swaran Singh (Supra)** has enunciated that the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the tribunal. The Hon'ble Supreme Court as well as our own the Hon'ble High Court, in plethora of decisions by relying upon the decision of the Hon'ble Supreme Court in the case of Swaran Singh (Supra), have clearly held that the Tribunal can issue a direction to the Insurance Company to pay the amount of compensation first to the third party and then recover the same from the owner of the offending vehicle. The Hon'ble Supreme Court has after considering all such prior decisions in the case of Swaran Singh (Supra) and culled out the guiding principles on various issues including the absence, fake or invalid driving license. The Hon'ble Supreme Court has clearly concluded in para 96 of the decision in the case of Swaran Singh (Supra) that, *"the liability of the Insurance Company to satisfy the decree at the first instance and to recover the awarded amount from*

the owner or driver thereof has been holding the field for a long time." Therefore, in view of the decision of the Hon'ble Supreme Court in the case of Swaran Singh (Supra) the cited decision will not become helpful to the Insurance Company in this matter.

47. At this stage in regards to the controversial issue, it would be profitable to refer the decision of our own the Hon'ble High Court in the case of *National Insurance Company Ltd. Vs. Nareshkumar Javsing Bamaniya*, reported in *2020 (4) GLR 2481*. Our own the Hon'ble High Court has also considered and decided the same issue and observed and held that ;

"5.6 In view of the foregoing discussion and the position of law emerging, in the facts and circumstances of the present case, the appellant insurance company could not be fastened with the liability in law. The driver of the offending truck insured with the appellant was not authorized to drive the vehicle when the accident occurred and thus there was a breach of policy conditions. appellant has to be absolved from liability to payment of compensation.

6. Thus, the appellant insurance company has been able to establish its defense. For the reasons recorded above, the appellant insurance company is absolved from liability to pay the compensation. The immediate question is however, whether in the facts situation obtained, the insurer is required to be directed

to pay the claim amount with liberty to recover the same from owner of the vehicle.

6.1 It was submitted in this regard on behalf of the respondent that even if the appellant insurance company is held not liable, by applying the principles laid down in Swaran Singh (Supra), the insurer may be directed to pay the claim amount awarded by the Tribunal to the claimants in the first instance and liberty may be reserved for the insurer to recover from the owner.

6.2 Now, in Swaran Singh (supra), the supreme court summarized its findings as under to propound the principle of pay and recover.

"(i) Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.

(ii) Insurer is entitled to raise a defence in a claim petition filed under Section 163 A or Section 166 of the Motor Vehicles Act, 1988 inter alia in terms of Section 149(2)(a)(ii) of the said Act.

(iii) The breach of policy condition e.g., disqualification of driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of section 149, have 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 defenses available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licenced driver or one who was not disqualified to drive at the relevant time.

(iv) The insurance companies are, however, with a view to avoid their liability must not only establish the available defense(s) raised in the said proceedings but must also establish 'breach' on the part of the owner of the vehicle; the burden of proof where for would be on them.

(v) The court cannot lay down any criteria as to how said burden would be discharged, inasmuch as the same would depend upon the facts and circumstance of each case.

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the

cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insured under section 149(2) of the Act.

(vii) The question as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver, (a fake one or otherwise), does not fulfil the requirements of law or not will have to be determined in each case.

(viii) If a vehicle at the time of accident was driven by a person having a learner's licence, the insurance companies would be liable to satisfy the decree.

(ix) The claims tribunal constituted under Section 165 read with Section 168 is empowered to adjudicate all claims in respect of the accidents involving death or of bodily injury or damage to property of third party arising in use of motor vehicle. The said power of the tribunal is not restricted to decide the claims inter se between claimant or claimants on one side and insured, insurer and driver on the other. In the course of adjudicating the claim for compensation and to decide the availability of defence or defences to the insurer, the Tribunal has necessarily the power and jurisdiction to decide disputes inter se between insurer and the insured. The decision rendered on the claims and disputes inter se between the insurer and insured in the course of adjudication of

claim for compensation by the claimants and the award made thereon is enforceable and executable in the same manner as provided in Section 174 of the Act for enforcement and execution of the award in favour of the claimants.

(x) Where on adjudication of the claim under the Act the tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of section 149(2) read with sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the tribunal. Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the tribunal to the Collector in the same manner under Section-174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by sub-section (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the tribunal.

(xi) The provisions contained in sub-section (4) with proviso thereunder and sub-section (5) which are intended to cover specified contingencies mentioned therein to enable the insurer to recover

amount paid under the contract of insurance on behalf of the insured can be taken recourse of by the Tribunal and be extended to claims and defences of insurer against insured by relegating them to National Insurance the remedy before regular court in cases where on given facts and circumstances adjudication of their claims inter se might delay the adjudication of the claims of the victims."

6.3 In Vinod Kumar Lamba (supra), by relying on Swaran Singh (supra), the Apex Court stated as under, "In the present case, the owner of the vehicle (respondent No.1) had produced the insurance certificate indicating that vehicle No. DIL- 5955 was comprehensively insured by the respondent Pappu And Others vs Vinod Kumar Lamba And Another on 19 January, 2018 Applying the dictum in the case of National Insurance Company Ltd. (supra), to subserve the ends of justice, the insurer (respondent No.2) shall pay the claim amount awarded by the Tribunal to the appellants in the first instance, with liberty to recover the same from the owner of the vehicle (respondent No.1) in accordance with law."

6.4 The Motor Vehicles Act, 1988, is a beneficial legislation. It has to work in its ultimate analysis to the help and benefit of those who have suffered in vehicular accident. Keeping in view the object of the legislation and the other attendant aspects of this case, the dictum in Swaran Singh (supra) and Vinod Kumar Lamba (supra) could be properly applied. The reasonable course would be to follow the principle of pay and recover. Eventhough, the appellant insurance company

is held entitled to be absolved from liability for compensation, it is required in the interest of justice that in the first instance, the appellant insurance company pays the amount of compensation to the claimants and thereafter, it may effect recovery from the owner in accordance with law.

7. Resultantly, the judgment and awards of the Motor Accident Claims Tribunal impugned in the respective appeals are set aside on the limited aspect insofar as the Tribunal therein held the appellant insurance company liable for compensation. The rest parts of the judgment and awards concerned shall stand to operate. It is, however, further provided and directed that the compensation amount awarded by the Accident Claims Tribunal in each of the Motor Accident Claim Petitions shall be satisfied and paid to the respective claimants by the appellant company in the first instance. The liberty is reserved for the appellant insurer to recover the amount thereafter from the owner of the vehicle in accordance with law. The respective judgment and awards shall stand modified to the extent and in terms as directed here in above. All the appeals are allowed to the aforesaid extent.’’

48.Recently, in the case of *Akula Narayana Vs. Oriental Insurance Company Ltd.*, reported in **2025(0) AIJEL - SC 76090**, it is observed and held by the Hon’ble Supreme Court that,

“12. Where the contract of insurance is not disputed, even on breach of insurance conditions, this Court had allowed recovery of compensation from the insurer by giving right

to the insurer to recover the same from the vehicle owner. The pay and recover principle has been consistently followed even though it was doubted in a reference which remained unanswered.

.....Recently in Rama Bai v. Amit Minerals again applied the said principle and while allowing the appeal of the claimant directed that the insurance company shall satisfy the award and may recover from the insured. Following the aforesaid decisions, we deem it appropriate to allow the appeal by directing that the first respondent (i.e., the insurer) shall satisfy the award, though, however, it can recover the amount so paid from the insured (i.e., owner of the vehicle).

49.It is one of the contention raised by the Ld. Advocate for the respondent No.3 - Insurance Company that, the accident in question was happened on 16/02/2023, while the present petition filed on 24/03/2023, after the amendment in the Motor Vehicle Act, which was came into effect on 01/04/2022, after amendment of Section 149 of the old Act, there is no scope of order to Pay and Recover to the Insurance Company, hence the liability of the respondent No.3 - Insurance Company may please be exonerated. In support of his arguments, Ld. Advocate for the respondent No.3 - Insurance Company, Mr. V. S. Jethva has relied upon various judgments of the Hon'ble Supreme Court as well as Hon'ble High Courts.

50. As against this submission made by the Ld. Advocate Mr. Jethva for the respondent No.3 - Insurance Company, Ld. Advocate for the petitioners Mr. Chavda has submitted that, considering the various judgments of the Hon'ble Supreme Court as well as the Hon'ble High Courts regarding "Pay & Recover" the Insurance Company is bound to pay compensation to the petitioners. In support of his above submission, Ld. Advocate Mr. Chavda has relied upon the judgment of the Hon'ble Madras High Court in the case of *Bajaj Alliance General Insurance Company Ltd., Vs. Rajadhanasekar and others, The Madurai Bench of Madras High Court, C.M.A. (M.D.) No. 709 of 2025 and C.M.A. (M.D.) No. 11365 of 2025*. wherein it is observed and held that,

9. The issue raised in this appeal with regard to pay and recovery has already been considered in a batch of cases by a Learned Judge of this Court in C.M.A. No.554 of 2025 and batch reported in 2025/MHC/991. Following the said order, recently I had an occasion to pass an order in C.M.A.(MD) No.653 of 2025 on 10.07.2025, which reads thus:

"11. When similar issues were raised before the Principal Seat of this Court in C.M.A. No.554 of 2025 and batch reported in 2025/MHC/991, a learned Single Judge has held that notwithstanding the deletion of proviso to old Section 149(4) of M. V. Act (New Section 150), the Motor Accident Claims Tribunal can order pay and recovery. The relevant observation of this Court in 2025/MHC/991 reads as follows:-

“28. The very same title or caption is retained in New Section 150 of Motor Vehicles Act. Further, defences enumerated under Section 150(2) are result of breach/omission by insured over which innocent third parties have no control. Hence, it is highly inequitable to interpret the section against its own title and object of main enactment. In this regard, it would be appropriate to refer to observation of Apex Court in British India General Insurance Co. Ltd., vs. Captain Itbar Singh and others reported in 1959 SCC OnLine SC 32, which reads thus:-

17. ...It was said that the assured might be a man of straw and the insurer might not be able to recover anything from him. But the answer to that is that it is the insurer's bad luck. In such circumstances the injured person also would not have been able to recover the damages suffered by him from the assured, the person causing the injuries. The loss had to fall on some one and the statute has thought fit that it shall be borne by the insurer. That also seems to us to be equitable for the loss falls on the insurer in the course of his carrying on his business, a business out of which he makes profit, and he could so arrange his business that in the net result he would never suffer a loss. On the other hand, if the loss fell on the injured person, it would be due to no fault of his; it would have been a loss suffered by him arising out of an incident in the happening of which he had no hand at all.” (emphasis supplied)

The Apex Court in the above mentioned case law in a beautiful language emphasized the plight of third party victims and ability of insurer to cope up with liability created by law under Section 149(1) [New Section 150(1)]. Therefore, this Court holds that Section 149(1) [now Section 150 (1)] imposes a duty on insurer to satisfy award

passed against insured in respect of third party claims and that duty is not affected by deletion of proviso to Section 149 (4).

29. Section 149(5) mandates that any amount paid by the insurer to the third party over and above the amount payable by insurer to the insured under the policy, shall be recovered by the insurer from the insured. Now, by virtue of new Section 147(2), the Central Government is empowered to prescribe a base premium and liability of the insurer in respect of such premium for the insurance policy. Since the liability of the insurer in respect of third party insurance is sought to be limited, by virtue of notification by Government in consultation with Insurance Regulatory and Development Authority, Sub-Section 5 of old Section 149 is deleted to remove doubt. The deletion of Sub-Section 5 of old Section 149 is in tune with the amendment introduced under Section 147(2).

30. In view of the discussions made earlier, this Court holds that notwithstanding deletion of proviso to Sub-Section (4) of Old Section 149 and Sub-Section (5) of very same Section which is renumbered as Section 150, the insurer's liability to honour the award passed against the insured in respect of third party claims continues and in the event of insurer's success in raising a defence under Sub-Section (2) of New Section 150, the Tribunal can very well order pay and recovery. In view of the same, the first argument made by the learned counsel for the appellant is rejected.”

12. The above decision is squarely applicable to the case on hand. From the reading of the above said judgment, it is clear that the learned Single Judge has also followed the similar view taken by

the Allahabad High Court in ICICI Lombard General Insurance Co Ltd Vs. Arti Devi and others dated 31.01.2025 with regard to pay and recovery.

51.In view of the above elaborative discussion and principles as laid down by the Hon'ble Supreme Court in the plethora of decisions and more importantly in the case of *Swaran Singh* (supra), the respondent No.3 - Insurance Company is required to be directed to first pay the amount of compensation as awarded to the petitioners and further direction can be issued that, insurance company can recover the said amount of compensation as directed to be paid from the owner - i.e. the Respondent No.2 in accordance with the law. Hence, **the issue No.2 is answered** accordingly.

INTEREST ON AWARDED AMOUNT :-

52.Ld. Advocate for the Petitioners has submitted that the petitioners be awarded the amount of compensation with interest at the rate of 12%, while the Ld. Advocate Mr. Jethva for the Insurance Company has submitted that, presently the rate of interest in the Nationalized Bank are reduced, so the rate of interest should not be more than the rate of interest of the Nationalized Bank. The provisions of Section 171 of the M. V. Act is required to take into consideration. Section 171 of the M. V. Act, deals with the award of interest where any claim is allowed, it reads as follows :

“Section - 171. Award of interest where any claim is allowed :-

Where any Claims Tribunal allows a claim for compensation made under this Act, such Tribunal may direct that in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as it may specify in this behalf.”

53. Under the said provision no rate of interest has been fixed and its duty is bestowed upon the Tribunal to fix the rate of interest. In *Abati Bezbaruah Vs. Dy. Director General, Geological Survey of India and Another*, reported in *(2003) 3 SCC 148*, the Hon'ble Supreme Court has held that:

“The rate of interest must be just and reasonable depending upon the facts and circumstances of each case and taking all relevant factors including inflation, change of economy, policy being adopted by Reserve Bank of India from time to time, how long the case is pending, permanent injuries suffered by the victim, enormity of suffering loss of future income, loss of enjoyment of life etc., into consideration.”

54. The Hon'ble Supreme Court has by applying the principles as enunciated in the case of *Abati Bezbaruah (Supra)* also held in the case of *Puttamma and others Vs. K. L. Narayana Reddy and another*, reported in *AIR 2014 Supreme Court 706* as under :

“61. In Supe Dei v. National Insurance Co. Ltd. and Anr. (2009) 4 SCC 513, this Court held that proper interest would be 9% per annum.*

62. In view of the aforesaid provisions of the Act, 1988 (Section 171) and the observation of this Court, as noticed above, we keep this question open for Tribunals and Courts to decide the rate of interest after taking into consideration the rate of interest allowed by this Court in similar case and other factors such as inflation, change in economy, policy adopted by the Reserve Bank of India from time to time and the period since when the case is pending.”

55. Therefore, having regards to the facts and circumstances of the case, by keeping in mind the above principles enunciated by the Hon'ble Supreme Court, it would be just and proper to award the simple interest at the rate of 7.5 % per annum. Hence, the petitioner shall be entitled to get simple interest at the rate of 7.5 % per annum on the awarded amount of claim from the date of filing of claim petition till payment of awarded amount.

TAX DEDUCTED AT SOURCE:

56. In the case of *Smt. Hansaguri Prafulchandra Ladhani & Others Vs. Oriental Insurance Company Limited & Others*, reported in 2007 (2) GLH 291, our own the Hon'ble High Court of Gujarat has laid down the guidelines regarding the Tax Deducted at Source. In this decision, the Hon'ble High Court has directed that if amount of interest calculated on the awarded amount does not exceeds Rs. 50,000 per year per petitioner, then no TDS shall be deducted by the Insurance Company/ respondents at the time of depositing the awarded amount along with interest in the Tribunal. The same principles

have been reiterated by our own the Hon'ble High Court in the case of *New India Assurance Co. Ltd. Vs. Bhoyabhai Haribhai Bharvad and others* reported in 2017 ACJ 1727. Therefore, in view of the ratio laid down in these decisions, the respondent/Insurance company is/are hereby directed not to deduct the TDS if the amount of interest does not exceeds Rs. 50,000/- per year per petitioners.

57. In view of the above discussion, all the points are answered accordingly and in the interest of justice following order is passed.

-:: ORDER ::-

1	The present Claim Petition No.2 of 2023 of the petitioners is hereby partly allowed with costs and interest only against the Respondents No.1 and 2.
2	The Petitioners do recover Rs.8,83,000/- (Rupees Eight Lakhs Eighty Three Thousand only) as compensation along with a simple interest to be calculated @ 7.5 % per annum from the date of filing of the claim petition till payment.
3	The respondent No.3 - Go-Digit General Insurance Co. Ltd., is hereby exonerated from its liability to pay the amount of compensation to the petitioners. However, the respondent No.3 - Go-Digit General Insurance Co. Ltd. is directed to pay the amount of compensation first to the petitioners with a liberty to

	recover the same from the respondent No.2 being the owner of the offending vehicle Motorcycle bearing registration No. GJ-01-PG-3029.
4	The Respondent No.3 - Go-Digit General Insurance Co. Ltd. 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, in the Bank Account of this Tribunal directly by NEFT or RTGS maintain with State Bank of India, Main Branch, Kodinar, within one month from the date of this order.
5	On depositing of the above amount of award by the Respondents in this Tribunal, the deficit amount of Court Fee Stamp, if any, on the awarded amount be deducted first and thereafter, the remaining amount be disbursed to the Petitioners. The 60% of the amount of the share of the petitioners be deposited in the name of the Petitioners, in any nationalized bank of the choice of the petitioners for the period of 5 years and the remaining 40% amount of the shares of the petitioners shall be made directly to the credit of the Bank Account of the respective Petitioners by NEFT or RTGS.
6	The Petitioners shall be entitled to receive periodical interest on the Fixed Deposits, but shall not be entitled to raise loan or advance without the prior permission of this Tribunal.

7	<p>The petitioners of the petition are directed to submit following details of their bank accounts to this Tribunal within one week from today in compliance of the Circulars of the M.A.C.T., Kodinar :</p> <ol style="list-style-type: none">(1) Name of the claimants/victims with address:(2) Account Number of the claimants/victims:(3) Name of the Bank & Branch:(4) Bank IFSC Code:(5) First page of Bank Passbook, which will compulsorily contain photograph of the claimants /victims duly attested by the Bank concerned:
8	<p>The respondents (the Insurance Company / transport corporations /such other entities) shall deposit the awarded amount of compensation, as directed in Circular No.22 of 2022 of District Court, Gir-Somnath, dated 03.02.2022 in Account Name : Motor Accident Claim Tribunal, Kodinar, Account No.40745501739, IFS Code: SBIN0060033, MICR : 362002141 and on such deposits being made, the respondents (the insurance company/transport corporations/such other entities) shall submit a letter to the Registry of District Court, Kodinar enclosing a copy of the Bank Advice, in prescribed format as below, as per which the deposit was made to the Bank Account of this Claims Tribunal, to enable the Registry of Claims Tribunal (M.A.C.T., Kodinar) to keep tab on the deposits made and the M.A.C.Ps for which they were made,</p>

	<p>which is a fundamental need for a smooth implementation.</p> <p>The PAYMENT ADVICE for remittance of compensation is as under :</p> <p>From : (Name of Bank)</p> <p>To : (Name of Court)</p> <p>We confirm remittance of compensation as follows on instructions of Insurance Company/Transport Corporation :</p> <ol style="list-style-type: none"> 1. M.A.C.P. Number 2. On the file of (Name of Claims Tribunal) 3. Place 4. Date of Award 5. Amount Deposited 6. Income Tax Deduction at Source, if any Unique Transaction Reference (UTR) No.
9	The Insurance Companies, Transport Corporations or such other entities making such deposit, shall also send a copy of the PAYMENT ADVICE in the aforesaid Clause to this Claims Tribunals and serve a copy of the same on the claimants or their counsel as the case may be.
10	Award be drawn accordingly.
11	PDF file of this judgment be sent to the respondent No.3 - Insurance Company through email.

Pronounced in the Open Court on this 24th April, 2026.

Date : 24.04.2026.

Place : Kodinar.

(Atulkumar R. Patel)
M.A.C.T. (Aux.) &
2nd Additional District Judge,
Gir-Somnath at Kodinar.
[UIC No. GJ-00710]