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**BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL
(AUX.) AT VISAVADAR.**

M.A.C.P. No.254 of 2017
(Old MACP No. 337/2015)

Exh.____

<u>Claimants:</u>	<u>Age</u>	<u>Occupation</u>
Gopalbhai @ Yogeshbhai Harsukhbhai Korat R/o. Sakroda, Tal. Bhesan.	27	Business
V/s.		
<u>Opponents:</u>		
(1) Bhargavbhai Ishvarbhai Lakhani R/o.10, Lakshmiba Park Society, Kamrej Four Ways, Kamrej, Surat. (Driver/Owner of Motor Car)	Adult	Business
(2) Royal Sundaram Alliance Insurance Co. Ltd. At. Chandan Hourse, Foruth Floor, Opp. Pentalun, Mithakali Six Ways, Ahmedabad.	-	-

Claim Petition U/Sec. 166 of the Motor Vehicle Act
for getting compensation of Rs. 15,00,000/-

APPEARANCE

Mr.G.P.Dave, Ld. Advocate for the claimant.

Mr.K.D.Odedara, Ld. Advocate for the opponent Nos. 1.

Mr.J.D.Chaudhary, Ld. Advocate for the opponent Nos. 2.

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

1.___The present claim petition was initially filed before the Hon'ble MACT, Junagadh. The same was registered as MACP No. 337/2015, and as per the office order no. 34/17, dated 27/02/2017, issued by Hon'ble District Court, Junagadh, the present claim petition is transferred to Visavadar Establishment and registered as MACP No. 254/2017.

2.___Then my learned Predecessor had tried this claim petition with M.A.C.P.No.253/2017 being group matter as per the provision of Section-166 of the M. V. Act and by common judgment and order, dated 20-04-2019, the present petition was partly allowed and the opponents were jointly and severally directed to pay Rs.2,35,600/- as compensation together with interest at the rate of 9% p.a.

3.___The award passed in M.A.C.P. No.254/2017 by my predecessor judge was challenged before the Hon'ble High Court of Gujarat by way of First Appeal No.4691 of 2019, which was decided on 08-12-2025. The Hon'ble High Court of Gujarat has held in Para-(3) and (4) as under :

“3. Considering the manner of determining the compensation, this Court is of the opinion that it would be in the interest of justice if this case is remanded back to the learned Tribunal to reassess the compensation and accordingly, the impugned judgment and award dated 20.04.2019 passed by the learned Motor Accident Claims Tribunal (Aux.), Visavadar in M.A.C.P. No. 254 of 2017 (old case No. 337 of 2015) is set aside, and the case is remanded back to the learned Tribunal to reassess the compensation as per settled law in this regard.

4. In view of the above discussion, the captioned appeal stands disposed of, and the impugned judgment and award are remanded back to the learned Tribunal to determine the compensation, within a period of three months from today. Learned counsels for both parties are directed to cooperate with the learned Tribunal to decide the matter within the timeline prescribed. In case the parties fail to cooperate with the learned Tribunal in deciding the matter, the time limit as directed by this Court shall not be applicable.”

4. As per the order passed by the Hon'ble Gujarat High Court, the judgment and award passed in MACP No.254/2017 were set aside, and the matter is remanded back to this Tribunal to determine and reassess the compensation.

5. Pursuant to the judgment and order passed by the Hon'ble High Court of Gujarat in First Appeal No. 4691 of 2019, the present claim petition has been remanded to this Tribunal for reassessing and recalculating the compensation in accordance with law and in light of the observations made therein. After receipt of the record and proceedings from the Hon'ble High Court, notices were duly issued to the parties. The claimant and

opponent no.2 appeared through their respective learned advocates. The learned advocate for the claimant submitted an application at Exh. 122 seeking to exhibit documents produced vide marked 5/1 to 5/3. The learned advocate for opponent No. 1 filed a pursis at Exh. 121, stating that there was no objection to the same. Accordingly, as per the order passed below Exh. 122, the documents marked 5/1 to 5/3 have been exhibited as Exh. 123 to 125.

6.____The matter is thus taken up for fresh consideration on the aspect of quantum of compensation. Accordingly, this Tribunal now proceeds to examine the evidence on record and determine just and reasonable compensation payable to the claimant.

7.____The short facts of the case of the applicant are that on 10/07/2015, i.e. on the day of the accident, the applicant was travelling on a motorcycle from Bhesan towards Sakaroda village, when he reached near Hadmatiya Chowkdi, opponent No. 1 allegedly drove his car at a high speed and in a rash and negligent manner, endangering human life, and dashed the motorcycle from behind. As a result, the applicant sustained serious injuries, and Sanjaybhai Harshukhbhai Korat, proceeding with the applicant, died during treatment. An FIR being C.R. No. I-22/2015 was registered at Bhesan Police Station against opponent No. 1 for the said accident. The applicant states that he was 27 years old and prior to the accident, he was engaged in agriculture and business, earning approximately Rs. 12,000 to 15,000 per month and maintaining his family from that income. Due to the accident, he suffered grievous injuries, including

fractures in his left leg and left hand, requiring hospitalization first at Jetpur Civil Hospital and thereafter at H.J. Doshi Hospital, Rajkot, where surgeries were performed, and rods were inserted. He remained admitted as an indoor patient and continues to undergo treatment, which is likely to continue for a long period. It is contended that he has suffered permanent disability of about 50% in his left leg and left hand, resulting in a substantial reduction of his physical capacity and ability to work. He claims to have incurred medical expenses of approximately Rs. 1,50,000 and to have suffered physical pain, mental agony, loss of income for at least six months, transportation expenses, and financial loss to family members who attended to him during treatment. Owing to his inability to work in agriculture and business as before, he asserts that he has suffered total financial loss to the extent of Rs. 15,00,000 with 18% interest and claims the said amount as compensation from the opponents jointly and severally.

8. On the filing of the claim petition, notices were issued to the opponents. Opponents No.1 has filed his written statement at Exh.17 wherein the opponent no.1 has denied the averments made by the claimant in the Petition at Exh. 1 and further stated that the applicant's main and interim applications were false, baseless, and filed without proper grounds. It is also stated that he had no knowledge of the facts mentioned in paragraphs 1 to 4 and denied the details therein. It is further objected that the applicant had failed to join the necessary parties, including the driver, owner, and insurer of the motorcycle bearing registration number GJ-6-L-6152, and therefore, the application suffered

from non-joinder of necessary parties. It is further asserted that the accident was, in fact, caused by the negligent driving of the applicant himself. It is further stated that he has no knowledge regarding the applicant's alleged income, injuries, medical treatment, expenses, disability, or financial loss, and denied liability to pay any compensation. Alternatively, he stated that if any compensation were to be awarded, the liability would rest with the insurance company of his vehicle, i.e., opponent No.2. He further contended that proper court fees had not been paid and that the applicant was not entitled to any relief or compensation as claimed. Accordingly, he prayed to dismiss the present claim petition with costs.

9. Opponent No.2 Royal Sundaram Alliance Insurance Co. Ltd. has filed its written statement vide Exh. 19 wherein it is stated that the applicant's claim was not legal, proper, or bona fide and therefore deserved dismissal. It denied all allegations not specifically admitted and contended that the provisions of Section 64VB of the Insurance Act, 1938, had not been complied with, relieving it of liability to indemnify the insured. The insurer further stated that the claimant had failed to disclose valid policy particulars and did not admit that the car bearing No. GJ-5JB-5131 was insured with it at the time of the alleged accident, asserting instead that the vehicle was not involved and that its implication was fabricated to obtain compensation. It is stated that the accident occurred due to the negligence of the motorcycle rider No. GJ-6L-6152, who was allegedly riding rashly without observing traffic rules and without wearing a

helmet, and that necessary parties such as the motorcycle's owner and insurer had not been joined. The insurance company denied the claimant's age, income, alleged permanent disability, medical expenses, and entitlement to compensation of Rs. 15,00,000. It is submitted that the vehicle owner and driver had allegedly colluded with the claimant, and therefore, the insurance co. is entitled to invoke Section 170 of the Motor Vehicles Act to contest the claim on all grounds available to the insured parties. It further raised statutory defenses under the Motor Vehicles Act and Income Tax Act, including breach of policy conditions, lack of notice, absence of a valid driving licence, and non-compliance with licensing rules. It is further stated that if compensation were awarded, interest should be limited to 6% and subject to TDS deductions as per applicable provisions, requiring submission of PAN details. Ultimately, praying for dismissal of the petition with costs.

10. The claimant has submitted his affidavit of examination-in-chief at Exh. 27. During the course of evidence on behalf of the claimant's side, the following documentary evidence has been produced on record:

Sr. No.	Description of the Documents :	Exh. No.
1	Medical Certificate of Govt. Hospital Jetpur	29
2	Medical Certificate of H.J. Doshi Hospital, Rajkot	30
3	Medical Prescriptions, list of items for operation and card of H.J.Doshi Hospital, Rajkot	31 to 49
4	Ambulance service receipt	50
5	Medical bills for medicines	51, 52

6	Blood Bank receipt	53
7	Medical bills for medicines and other items	54 to 61
8	Tara Surgical Bill	62
9	Medical bills for medicines and other items	63 to 67
10	Indoor Patient bill for H.J. Doshi Hospital, Rajkot	68
11	Medical bills for medicines and other items	69 to 74
12	Receipt of transportation expenses	75 to 78
13	OPD Bills of H.J. Doshi Hospital, Rajkot	79 to 101
14	Abstract of village form no.8-a and 7/12	102
15	Financial statements including Balance Sheet, Profit & loss account of the claimant.	103
16	Registration certificate of Food and Drug Control Administration	104
17	Computerized digital X-rays	105
18	Disability Certificate of claimant	106
19	Copy of F.I.R. bearing C.R.No.22/15 registered with Bhesan Police Station	123
20	Copy of Panchnama	124
21	Copy of Insurance Policy	125

11. In the present case, opponents no. 1 and 2 did not adduce any oral or documentary evidence.

12. In view of the facts and circumstances of the Claim petition and pleadings of the parties, my Learned Predecessor has framed the following issues vide Exh. 24 that came to be settled :-

1. Issue No.1 :Whether it is proved that the claimant sustained injuries on account of rashness or negligence in driving on the part of the driver of the vehicle/vehicles involved in the accident ?

2. Issue No.2 :What amount, if any, is the claimant entitled to by way of compensation, and from which of the opponents ?

3. Issue No.3 :What order and award?

13. My findings on the aforesaid issues, for the reasons stated below, are as under :-

1. Issue No.1 :In the affirmative.

2. Issue No.2 :As per the final order.

3. Issue No.3 :As per the final order.

14. I have heard and read the submissions of Learned Advocate Mr. G.P.Dave for the claimant. On the other side, even granting the opportunity for argument opponent no.1 and 2 did not remain present nor produce any written arguments, hence their right to produce an argument was closed by the passing of the order below Exh.1.

15. In the present case, during the trial by my learned predecessor, the learned advocates for the respective parties had not submitted any written arguments. However, after the matter was remanded to this Tribunal by the Hon'ble High Court, learned Advocate Mr. G.P. Dave, appearing for the claimant, has filed written arguments, which are taken on record at Exh. 127. wherein it was submitted that on 10/07/2015, the applicant and his brother, the deceased Sanjaybhai Harshukhbhai, were travelling on a motorcycle, and when they reached near

Hadmatiya Chowkdi, respondent No.1 allegedly drove car No. GJ-05-JB-5131 rashly and negligently, causing a collision that resulted in fatal injuries to Sanjaybhai and serious injuries and fractures to the applicant, as reflected in medical certificates. It is argued that two claim petitions, Nos. 253/2017 and 254/2017 were filed and later consolidated, and the applicant produced documentary evidence, including injury certificates, medical bills, prescriptions, X-rays, disability certificate, income records, and a business licence, all of which were admitted without objection. It is argued that the accident, injuries, expenses, permanent disability, and income were duly proved, and no rebuttal evidence was led by the opponents. It is also argued that the Hon'ble High Court remanded the matter for fresh consideration regarding the calculation of compensation. It is further argued that the claimant is a licensed trader earning Rs. 12,000–15,000 per month, and relying on judicial precedents, claimed 40% future prospects, application of a multiplier of 17 (age 27), and 50% functional disability, calculating future economic loss at Rs.20,16,000. Additional claims included medical expenses, transportation, pain and suffering, attendant charges, special diet, and business loss, totaling Rs.23,00,722 with 12% interest. It is argued that just and reasonable compensation should be awarded in light of the evidence and applicable judgments of the High Court and Supreme Court. The Ld. Advocate for the claimant has relied upon the following case laws :

- a. Rustom Bomanji Ginwala & Anr. Vs. Drive Ramdas Koli & Ors, reported in 2024 (4) G.L.H., 187.
- b. National Insurance Co. Ltd. Vs. Pranav Sethi and others, reported in AIR 2017 Supreme Court, 5157.
- c. Sanobanu Nazirbhai Mirza and others Vs. Ahmedabad Municipal Transport Service, reported in 2013 ACJ, 2733.

16. Considering the submissions and evidence, oral as well as documentary, forthcoming on record, I give my reasons on the above issues as hereunder :-

Issue No. 1 :-

17. So far as the question of negligence is concerned, the claimant in his affidavit of examination-in-chief at Exh. 27, has corroborated the facts of the petition to the extent that on 10/07/2015 at about 7:30 p.m., the applicant, along with Sanjaybhai Harsukhbhai Korat, was travelling on motorcycle No. GJ-6-CL-9152, when they reached near Harmadiya Chokdi, opponent No. 1, while driving his motor car at an excessive speed and in a rash and negligent manner, caused an accident, and as a result of the said accident, the applicant sustained fracture injuries on the left leg, left hand, and other parts of the body, as reflected in the injury certificate. It is further deposed that after the accident, the applicant was admitted to the Government Hospital at Jetpur and was thereafter referred for further treatment to H.J. Doshi Hospital, Rajkot, where he was

admitted for 5 days and operation was performed, a complaint was lodged against opponent No. 1, and the police, after investigation, filed a charge sheet against him.

18. It is further deposed by the claimant that the applicant incurred medical expenses of approximately Rs. 1,50,000/- towards such treatment. It is further deposed that during the course of treatment, which continued for about nine months, the applicant was required to frequently visit Doshi Hospital at Rajkot as advised by the doctors, and his family members had to travel repeatedly for the same, and one person had to remain constantly present with him, resulting in additional loss of income. It is further deposed that the applicant incurred substantial expenses towards medical treatment, medicines, a nutritious diet, and private transportation for follow-up visits, and owing to the prolonged treatment and resulting disability, he suffered business loss and continues to face serious difficulty in walking, sitting, standing, and using his left hand. It is further deposed that the applicant has suffered permanent disability in the left hand and left leg to the extent of approximately 50.6%. Hence applicant prays for compensation of Rs. 15,00,000/- and in support of his claim produced documentary evidence. It is further deposed that the accident occurred solely due to the rash and negligent driving of opponent No. 1, who was the driver and owner of the offending vehicle, and therefore opponent No. 1 is legally liable to pay compensation to the applicant. Similarly, opponent No. 2, being the insurer of motor car No. GJ-5-JB-

5131, at the time of the accident, is also legally liable to indemnify and pay compensation to the applicant.

19. In the cross examination of the claimant he admitted that on the date of incident he along with his brother was proceeding on motorcycle and he was sitting as pillion rider, that the Car was coming from opposite side and dashed with the motorcycle, that in the accident two vehicles were involved, that his brother was holding valid driving license and was ready to present it in the present case. In his cross he stated the facts of the treatment and mentioned the facts of work done by him prior to the accident.

20. The facts of the oral evidence are also corroborated by documentary evidence, like FIR No. I-22/2015 vide Exh. 123 lodged by Himatbhai Jasmatbhai Korat, of Sankrola, Tal Bhesan, wherein it is stated that the claimant and Sanjaybhai Harsukhbhai Korat met with an accident at Hadmatiya Chokdi, and in this accident Sanjaybhai Harsukhbhai Korat died, and the claimant has received injuries, and Girishbhai, i.e., brother of the complainant, has shifted the claimant to Rajkot for further treatment. From the F.I.R., it also transpires that the claimant and his brother were first shifted to Jetpur in an ambulance. It further transpires that the complainant has shown the motorcycle on which the claimant and his deceased brother were travelling, as well as the four-wheeler bearing registration No. GJ-5-JB-5131, at the place of occurrence of the accident, and the said F.I.R. is registered against the driver of Four wheel No. GJ-5-JB-5131.

21. No contradictory evidence is brought before the court during the cross-examination of the claimant. The said facts are also corroborated by the Punchnama vide exh. 124. It is also mentioned in the Panchnama at Exh. 124 that, both the vehicles, i.e. Motorcycle and Car was lying on the place of occurrence in damaged condition, and a break mark was also shown by the Panchs. It is further stated in Panchnama that the Motorcycle Hero Honda Splendor Plus with Black color and blue color stripe was lying there, and its front side and handle were broken, and the front pipe of the chassis was found bent, and a blood stain was reported on the motorcycle and from the place of occurrence. It further transpires that the motorcar was lying at a distance of 7 feet from the Motorcycle and said Car is a white color Tata Manza car. It was damaged with a blood stain on it. The estimated damage cost is Rs. 10,000/- for a motorcycle and Rs. 5,000/- for a motor car.

22. As discussed above, the involvement of Motor Car bearing registration No. GJ-5-JB-5131 in the occurrence of the present accident is brought on record, and the fact that the claimant has received fracture injuries in the present vehicular accident is also brought on record. F.I.R. was registered against the Driver of Car No.GJ-5-JB-5131, and the said car was shown by the complainant and Panchas at the place of the accident. Further, no independent contradictory evidence was produced even during the stage of the evidence of the opponents. In the absence of any contradictory evidence, this court has no reason to disbelieve the

oral as well as documentary evidence adduced from the petitioner's side.

23. Moreover, the claimant in his examination-in-chief has stated that the present accident has occurred due to the negligence of the opponent no.1, i.e., the driver of Motor Car, and in this accident, he sustained fracture injury. Going through the record, it appears that the driver of the Motor Car did not step into the witness box to prove his innocence, and therefore, the case of the claimant has more substance to consider the negligence on the part of the driver of the motor car. It is an admitted fact that the motorcyclist died in the said accident, and opponents Nos. 1- The car driver, who is the eyewitness of the accident, did not remain present when the matter was called out and has not produced any rebuttal evidence to disprove his negligence and involvement in the vehicles in question. Opponent No.2 - the insurance company has also not examined opponent Nos. 1, i.e., the driver & owner of the car, to controvert the story of the accident, so adverse inference has to be drawn against opponent No.1 - the car driver, who was driving the car at the relevant time. Copy of the FIR is on record vide exh. 123. Thus, all these documentary as well as oral evidence proves the fact that the accident took place due to the sole negligence of the Car driver and no one else. In these civil proceedings, the claimant does not need to prove beyond a reasonable doubt. The only preponderance of probabilities is to be ascertained. In light of this rule, I answer Issue No.1 in the affirmative accordingly.

ISSUE No. 2:-

24. Issue No. 2 pertains to the determination of the amount of compensation, if any, to which the claimant is entitled, and from which of the opponents the same is recoverable.

25. The Hon'ble High Court of Gujarat, in its judgment dated 08/12/2025, passed in First Appeal No. 4691 of 2019, has observed that,

“Considering the manner of determining the compensation, this Court is of the opinion that it would be in the interest of justice if this case is remanded back to the learned Tribunal to reassess the compensation.”

26. In view of the aforesaid directions, this Tribunal is required to reassess the compensation in accordance with the law. For proper adjudication of this issue, it is necessary to evaluate the claimant's income, age, applicable multiplier, medical expenses incurred, and other consequential losses. These aspects are discussed below.

(A) Income of claimant:

27. In the present case, the claimant has averred in the petition and examination-in-chief that at the time of filing of the petition, the petitioner was doing farming and business and earning Rs. 12,000/- to Rs. 15,000/- per month. In his cross-examination at Exh. 27, he admitted that he was doing Business of grocery shop and also stated that he was filing an income tax return. The claimant has produced financial statements vide Exh. 103 for the

period 01/04/2013 to 31/03/2014 and for the period 01/04/2014 to 31/03/2015. But had not produced Income Tax Return. Assessing these statements, it is found that the claimant has earned Net Profit of Rs. 2,13,325/- in the financial year 2013-2014 and also earned Net Profit of Rs. 2,42,500/- in the financial year 2014-2015. But these are the unaudited accounts. The Chartered Accountant, who issued these papers, was not examined. None of the persons who are preparing the account of the claimant has been examined. The claimant himself deposed that his monthly income is Rs. 12,000/- to 15,000/-. In the absence of any contradictory evidence on record and considering these unaudited accounts, this court has no reason to disbelieve that the claimant was earning at least Rs. 15,000/- per month from the business and agricultural land. No oral or documentary evidence has been produced by opponents to disprove the said fact. The Registration Certificate at Exh. 104 issued by the Food and Drug Control Administration, Gujarat State, regarding the retailer business carried out by the claimant, proved his business. Hence, prior to the present accident applicant was running a grocery shop and was also involved in agricultural work as proved vide Exh.102 and earning Rs.15,000/- monthly. Therefore, it would be just and proper to consider an income of Rs. 15,000/- that the claimant was earning per month at the time of the accident.

(B) Age & Multiplier: -

28. Claimant has stated in his petition as well as in his examination-in-chief, which remained unchallenged, that at the

time of the accident, he was 27 years of age. Treatment papers vide exh. 68, 79 to 101 corroborate the said fact. Therefore, at the time of the accident, the claimant was around 27 years old. As per the stick-yard laid down in the judgment of Hon'ble Apex Court in the decision of the case “**Sarla Verma Vs, Delhi Transport**” **CIVIL APPEAL No. 3483 OF 2008 (Arising out of SLP [C] No.8648 of 2007)**, a multiplier of 17 is suggested between the age group of 26 years to 30 years. Hence, the applicable multiplier is 17 for determining the just compensation.

(C)Disability:

29. Claimant has also produced the Disability Certificate at Exh. 106 wherein Dr. M.M.Dolakia, M.S., (Ortho.), of Junagadh, has assessed permanent partial disability of the claimant at 50.6%, but the parties agreed to consider permanent disability of the claimant's body as a whole at 25% as per the endorsement below Exh. 28 & 106. But after the remand of the matter from the Hon'ble High Court, the Ld. Advocate for the claimant made a contention with respect to the agreed disability of 25%. The Ld. Advocate for the claimant forcefully argued that the Hon'ble Gujarat High Court in the case of **Rustom Bomanji Ginwala & Anr. Vs. Drive Ramdas Koli & Ors**, reported in 2024 (4) G.L.H., 187, has deprecated the practice of Tribunals for determining the permanent disability on the basis of pursis tendered by the practitioners appearing before it. This court is bound to follow the ratio laid down by the Hon'ble High Court and the Hon'ble Apex Court. Here in this case before me, the parties also agreed to consider the disability of the claimant to the

extent of 25%. The Ld. Advocate for the respondent made an endorsement below the list of documents vide Exh. 28 and disability certificate vide Exh.106. But considering the said Judgment, this court has to consider the percentage of disability on the basis of the medical evidence before it. The claimant had produced medical evidence on record vide Exh. 29 to 49 & 105. Dr. M.M. Dholakiya gave a certificate of permanent partial functional disability to the extent of 50.6% of the body as a whole, which is on record vide Exh. 106. But perusing the said medical evidence with disability certificate, it is required to note at this stage that there is no evidence on record to prove that the said doctor Dholakiya has treated the claimant. Hon'ble Supreme Court in the Judgment of **Rajkumar Vs. Ajaykumar**, reported in (2011) 1 SCC 343, held that,

"18. The Tribunal should also act with caution, if it proposes to accept the expert evidence of doctors who did not treat the injured but who give 'ready to use' disability certificates, without proper medical assessment."

30. Moreover, the claimant had neither examined the doctor who treated the claimant nor had he examined the doctor who gave this disability certificate. As per the disability certificate vide Exh. 106, the major clinical findings are as follows:

"Left Upper Extremity : Wasting of forearm muscles. Stiff wrist joint with deformity. Healed scar of wound and surgery. All movement is restricted and painful. Dorsal flexion 0 to 15 degrees, plantar flexion 20 degrees, and ulnar and radial deviation of the wrist are restricted. Grip not possible. Cannot catch an

object of 1 inch. Healed scar on the dorsal side of the forearm. Fingers are stiff with painful motion.

Operated by nailing.

Movement loss 50%. Grip and pinch are weak. Power loss 30%. Pain during all movements. Impairment on left upper extremity 24.5 per cent. Pain component 3%, so the total 27.5%.

(A) Lower Extremity: Walks with limp & pain; Wasting of left thigh and calf muscles, Operative scar seen on left lower leg, lower third leg. Defuse swelling on the ankle. The injury wound healed with a scar. Movement of the knee is painful. Left knee movement flexion 0 degree to 90; Power grade 3+ to 4 c.g. 30% loss Movement loss of the knee 20%, and Power loss 30%; as per the formula, 15.8% impairment of the knee joint.

Ankle: Movement Dorsal flexion 0 degrees to 10, Plantar flexion 0 to 20. Inversion and eversion are weak. Movement 40% and Power loss 30%. The ankle is unstable and weak with painful motion. As per the formula, 21.6% impairment of the ankle. Combining knee and ankle, $21.6+15.8=33.6\%$.

Impairment of the left Lower extremity 33.6%.(B)

Combining A+B=50.8% Body as a whole.

From the above findings and examination, I have found she has permanent partial functional disability 50.6% in word FIFTY POINT SIX PER CENT of the body as a whole.

The calculation is as per the formula given in "Manual for Doctors to Evaluate Permanent Physical Impairment".

The formula is " $a+b \frac{(90-a)}{90}$ " / 90

Functional Disability :- Pain; Grip; Hard work; Weak wrist; Motion of wrist and fingers. Gait; Cross leg seating, Hard work; Motion of knee and ankle."

31. As per the medical bills, the claimant had taken the treatment from the date of the accident i.e.10/07/2015 to 24/03/2018. Thus, the treatment lasted for nearly three years. In the absence of any contrary evidence, this court has no reason to disbelieve the said disability certificate and therefore has reason to hold that the claimant suffers permanent partial functional disability to the extent of 50.6% of the body as a whole.

32. But at the same time, in the very same Judgment of the Hon'ble Gujarat High Court, it was specifically held that,

"The percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal, on the basis of evidence, concludes that the percentage of loss of earning capacity is the same as the percentage of permanent disability).The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in its entirety.The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of the profession, occupation, or job, age, education, and other factors."

33. Thus, just because the doctor gave a certificate of permanent partial functional disability to the extent of 50.6% of the body as a whole, this court can not hold that the earning capacity of the claimant was reduced to the same extent of 50.6%. Here in this case before me, the age of the claimant is 27 years. The revenue record vide Exh. 102 proves the fact that the

claimant is having agricultural Land. Than naturally as per his oral evidence, the claimant is earning something from the agricultural land. The claimant had not specified that hwo much amount he earns from agricultural land. Registration certificate of the Food and Drug Control Administration is on record vide Exh. 104 that proves the fact of oral evidence of the claimant that the claimant was also running a grocery shop at the time of the accident. Therefore, in the absence of any specific evidence, this court has no reason to believe that the earning capacity is reduced to the extent of the claimant's disability. Considering the age and working of the claimant and considering the income statements, it will serve the ends of justice if it is held that the earning capacity of the claimant is reduced to the extent of 25% due to said accidental injuries that resulted in the partial functional disability.

(D) Future Loss of Income, including future prospective income:

34.___The Ld. advocate for the claimant has prayed for 40% future prospects in his written argument produced vide Exh. 127. Looking to the Judgment of Hon'ble Apex court reported in **Rajeev Sharma Vs. Yogendra Singh**, reported in 2023 ACJ, 633. In the said matter Hon'ble Apex court granted 40 % income towards future prospects as there is a permanent disability. Further, the Hon'ble Apex Court in the case of **Mohd. Sabeer @ Shabir Hussain Vs. Regional Manager, U.P. State Road Transport**, reported in 2023(20) SCC 774, in para 18, has observed as under :

"Para 18. It is well settled position of law that in cases of permanent disablement caused by a motor accident, the claimant is entitled to not just future loss of income, but also future prospects. it has been reiterated by this Court in multiple instances that "just compensation" must be interpreted in such a manner as to place the claimant in the same position as he was before the accident took place.

35. Taking note of the Hon'ble Apex Court's Judgment in **National Insurance Company Ltd. Vs. Pranay Sethi and Others**, (AIR 2017 SC 5157) prospective income to the injured person who sustained permanent disability in a vehicular accident can be granted. Hence, in this case, the claimant also received permanent disability in the present vehicular accident. Hence, in the present case before me, prospective income is also required to be granted.

36. This tribunal has quantified the income of the claimant as Rs. 15,000/- per month. As discussed above in this case, prospective income is required to be considered. The age of the claimant is proved as 27 years at the time of the accident, and therefore, 40% of prospective income is required to be added in monthly income. Therefore, future prospective income would be Rs. 15,000/- x 40% = Rs. 6,000/- prospective income. Going by the age of the claimant at the time of the accident, a multiplier of 17 would be admissible. Keeping in mind the permanent disability as 25%, the compensation under this head can be worked out at Rs. 10,71,000/- [(Rs.15,000/- income+Future prospective income Rs.6,000) X 12 months X 25% disability of body as a whole X 17 multiplier].

(E) Actual loss of income: -

37. The claimant suffered fracture injuries on his hands and leg and many other injuries all over his body, as is evident from various case papers, including X-Ray Scan report vide Ex. 77, medical report vide Ex.27,30 & 68, and disability certificate vide Ex. 106. The permanent partial disability is 50.6% body as a whole. Further looking at the OPD and follow-up bill produced vide Exh 79 to 101, the treatment lasts for at least 3 years. But the total period of Hospitalization was from 10/07/2015 to 15/07/2015. Thus total period of treatment as an indoor patient is not more than 5 days. Hence, it can be believed that the claimant might not have been able to work for at least one month. Therefore, this tribunal awards an amount of Rs. 15,000/- x 1 month = Rs. 15,000/- under the head of actual loss of income.

(F) Pain, shock & suffering: -

38. Considering the nature of injuries as discussed above and considering the arguments of the Learned Advocates, I award Rs. 55,000/- as compensation on account of pain, shock, and sufferings undergone by the claimant and likely to be undergone in the future.

(G) Attendant charges, Special diet & Transportation: -

39. Having regard to the nature of injuries sustained by the claimant, he must have spent some amount on the attendant and nutritious food, and he might have spent some amount on transportation to and from the hospital for his follow-up

treatment. Therefore, I further award an amount of Rs. 27,500/- towards attendant charges, special diet, and transportation. As discussed earlier, the treatment of the claimant last upto three years and had to travel frequently for obtaining medical treatment; therefore, transportation expenses are also considered under this head. Further, the claimant has produced receipts for ambulance and other transportation expenses at Exh. 50 and Exh. 75 to 78, which show that the claimant had travelled by ambulance and other private vehicles for the purpose of treatment. Hence, considering these documents, an additional amount of Rs.7,500/- is awarded towards transportation expenses.

(H) Medical Expenses: -

40. The claimant has produced on the record of the case various medical bills at Exh. 51 to 66, 68 to 74, and 79 to 101 for his medical treatment on record. In these bills, two bills are sale returned bills, i.e., Exh. 58 and 69. Hence, from these bills, calculating the total medical expense incurred by the claimant amounts to Rs. 67,382/-. Therefore, having regard to the nature of injuries the claimant is entitled for **Rs. 67,382/-** towards the head of medical bills.

41. Therefore, this tribunal awards the following amount to the claimant, which opponents nos. 1 & 2 are liable to pay to the claimant jointly and severally as discussed herein above: -

Sr.No.	Head	Rupees
1	Future loss of income	10,71,000/-
2	Actual loss of income	15,000/-
3	Pain, shock, and suffering	55,000/-
4	Attendant charges, Special diet and Transportation	27,000/-
5	Additional Transportation expense	7,500/-
6	Medical expenses	67,382/-
	Total compensation (Rupees Fifteen Lakhs Seventy Three Thousand One Hundred and Thirty Nine only)	12,43,382/-

Liability:

42. _____ As far as the liability of opponents herein is concerned, as discussed herein above, opponent no.1 was exclusively liable for the happening of the accident. Opponents nos.1 have refrained from appearing before the tribunal and have not contested this petition against them. Tribunal is of the considered view that the defaulting Car no. GJ-05-JB-5131 was driven by opponent no.1 herein, as pleaded by the claimant in the petition, as well as his examination-in-chief, which remained unchallenged.

43. _____ The insurance co. raised a dispute of non-joinder of necessary parties. It is contended that it was an accident between motor-cycle and a car. It is also contended that the accident took place due to the sole negligence of the driver of the motorcycle. Therefore, they are the necessary parties, and they are liable for damages if any are allowed. But here in this case, it may be the case of composite negligence. The claimant is a pillion rider. So

he may choose any of the tort-feasors. He preferred the car owner/driver and their insurance company. He had not joined the Motorcycle Owners' and its insurance company at his risk. But that by itself does not bar his claim against the other tort-feasor, and as discussed hereinabove, the claimant proved negligence of the car driver. The opponents failed to prove otherwise. Hence, in the absence of any specific contrary evidence, this Tribunal has all the reasons to hold that the car driver was solely responsible for the alleged accident. The insurance policy is on record vide exh. 125. Hence, both opponents are jointly and severally liable to pay the awarded compensation to the claimant.

44. Further, at the time of the accident, the said vehicle was in the ownership of opponent no.1 as per the Insurance Policy of Car no. FJ-05-JB-5131 at Exh. 125, it was insured with opponent no.2 and said insurance is valid from 27.06.2015 to 26.06.2016.

45. Therefore, opponent No.1 is the driver and owner of the aforesaid Car No. GJ_5-JB-5131 and opponent No.2, the Insurance Company of the same, are liable for making the payment of compensation jointly and severally. Therefore, opponents nos.1 & 2 are jointly and severally liable to pay the compensation of Rs. 12,43,382/- (Rupees Twelve Lakhs Forty Three Thousand Three Hundred and Eighty Two only) with proportionate cost and interest from the date of this petition till the payment to the claimant.

Issue No.03 :-

46. As discussed above, the claimant is entitled to get the aforesaid compensation amount with interest from opponents herein, jointly and severally, which ought to have been paid to the claimant at the earliest stage. The same is the statutory duty of the opponents. But opponents have failed to give just compensation to the claimant at an earlier stage. Therefore, at this stage, it is required to be compensated by interest on the awarded amount. Hence, opponents are ordered to give simple interest at the rate of 9% from the date of the petition till the realization of the awarded compensation to the claimant. In light of the above-mentioned observations, this Tribunal gives its findings qua issue no. 3 as per the final order passed herein as under :-

: FINAL ORDER :

1. The present claim petition is hereby partly allowed.
2. Opponent nos.1 & 2 are ordered to pay **Rs. 12,43,382/- (Rupees Twelve Lakhs Forty Three Thousand Three Hundred and Eighty Two only)** to the claimant, jointly and severally, at the interest rate of **9%** per annum, along with the cost, from the date of filing of this claim petition till actual realization.
3. As the present matter was earlier decided on 20/04/2019 and has been remanded by the Hon'ble High Court of Gujarat vide order passed in First Appeal No. 4691 of 2019, any amount

previously deposited by the opponents pursuant to the earlier award in the present claim petition shall be adjusted and deducted from the compensation amount awarded hereinabove.

4. Opponents are hereby directed to deposit the accrued amount within 30 days from the date of the award of this tribunal.

5. After the amount is deposited, deficient court fees, if any, and/or interim compensation received earlier, if any, are ordered to be deducted first from the awarded amount.

6. After deduction of the above amount, this tribunal further directs to pay **40%** amount by RTGS/NEFT to the claimant, and the remaining **60%** amount be deposited as F.D.R. in the name of the claimant, in any Nationalized Bank, as per the choice of the claimant, for a period of five years.

7. The investment of Fixed Deposit shall carry the following terms and conditions: -

- a. Claimant is entitled to get interested in the Fixed Deposit Receipt quarterly if he desires without permission of the Tribunal.
- b. No loan, overdraft, or advance, known by any name or nomenclature, shall be made available on the said FDR, and the Bank shall not allow any encumbrance on the said Fixed Deposit.
- c. At the end of the stipulated period of F.D., as aforesaid, the Bank shall pay the total amount of

F.D.R. with interest accrued thereon, if any, by A/c Payee Cheque to be drawn in the name of the claimant without permission of the tribunal.

8. Claimant is directed to submit the following details within one week from today:

1. Name of the claimant(s)/victims(s) with address.
2. Name of the Bank & Branch Bank IFSC Code Account No(s). of the claimant(s)/victim(s).
3. The first page of the bank passbook, which will compulsorily contain the photograph of the claimant(s)/victims(s), duly attested by the Bank concerned, should be made available.
4. Wherever the claimant/victim is impleaded before the claim tribunal, his account details as above will have to be furnished.

9. The insurance company, as per the guidelines issued by Hon'ble Apex Court vide order dated 16.03.2021 and 16.11.2021 passed in the case titled "Bajaj Allianz General Insurance Company Private Limited Vs. Union Of India & Ors.", Writ Petition (Civil) 534/2020, shall deposit the compensation amount through RTGS / NEFT mode in the account, details of which are as under: -

Account name	MOTOR ACCIDENT CLAIM TRIBUNAL AUX VISAVADAR
Branch name	State Bank of India, Visavadar Branch.
Account No.	40748929670
IFSC Code	SBIN0060057
MICR No.	362002519

10. On such deposits being made, the insurance companies, as the case may be, either in person or through e-mail to be addressed at e-mail i.d. of MACP Tribunal(Auxi.), Visavadar, i.e., **mact.visavadar@gmail.com** shall submit a letter to the Registry of Additional District Court, Visavadar enclosing a copy of the said bank advice, in the prescribed format as per which the deposit was made to the bank account of the Claims Tribunal, to enable the Claims Tribunal to keep a 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 follows:

PAYMENT ADVICE FOR REMITTANCE OF COMPENSATION

From:

.....Bank.....

To:

.....Court.....

We confirm remittance of compensation as follows on instructions of (insurance company) :

1. MACP Number
 2. Case Disposed date
 3. Name of Court and Judicial Officer
 4. Name of applicant
 5. Name of applicant's Lawyer
 6. Name of the opponent
 7. Name of opponent's lawyer
 8. Amount of claim
 9. TDS Amount, if any
 10. UTR Number
11. The Insurance Companies making such deposits, 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 claimant/s or his/her/their counsel, as the case may be.
12. Award be drawn accordingly.
13. File be consigned to the record room after due compliance as per rules.

Signed and pronounced in the open Tribunal, today on this
06th day of March, 2026.

Date : 06/03/2026.
Place: Visavadar.

(Hetalkumar Vinodray Joshi)
4th Additional District Judge
& M.A.C. Tribunal (Aux.),
Visavadar
[Code No:GJ00599]