



GJJN210006662021 	MACP No.	<b>13/2021 (Main)</b>
	Received on :	13-09-2021
	Registered on :	13-09-2021
	Decided on :	13-05-2026
	Duration : YY-MM-DD	<b>04-08-00</b>
GJJN210006672021 	MACP No.	<b>14/2021 (Conso)</b>
	Received on :	13-09-2021
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**IN THE MOTOR ACCIDENT CLAIM TRIBUNAL[AUX.]  
ADDITIONAL DISTRICT COURT,  
JUNAGADH AT KESHOD.**

**Common M. A. C. Ps. No.13 & 14 of 2021**

**MAC Petition No.13 of 2021:-**

**Exh.-160**

- Gula Bhima Dahma,  
Aged about - 20 years,  
Occu.-labourer, Religion: -,  
R/o. Kotda, Dist. Zabua(M.P.)  
Now at Khareda, Tal. Keshod,  
Dist. Junagadh.

**Claimant....**

**Versus**

**Driver-Owner and Insurer of Ecco-Car No.GJ-03-KP-0485 :-**

- Mohsinkhan Salimkhan Belim,  
Aged: Adult, Occu. -Driving,  
Religious: -,  
R/o. Movana Gate, Dudhva Street,  
Tal. Keshod, Dist. Junagadh.

2. Rakesh Maheshbhai Mor ,  
Aged: Adult, Occu. Agriculture/Business,  
Religious: -,  
R/o. VC Plot, Nr, Station,  
Dhoraji, Dist. Rajkot.
3. I.C.I.C.I. Lombard General Insurance Com. Ltd.  
Through: Manager,  
Office at- Zodiaq Square, 3<sup>rd</sup> Floor,Office No. 7/9,  
Opp. Guru-dwara, S.G.Road, Bodakdev, Ahmedabad.

Driver-Owner and Insurer of Zen-Car No.GJ-05-AR-4082 :-

4. Nitalbhai Jashavantbhai Joshi,  
Aged Abt.: 33, Occu. -Service,  
R/o. Sahjanand Society No.2, Street No.5,  
Block No. 63, Junagadh.
5. Tushar Hareshbhai Thakar,  
Aged Abt.: 43, Occu. -Service,  
R/o. Nr, Vadla Fatak, Main road,  
Karadiya Chhatralay, Room No. 303,  
Timbavadi, Junagadh.
6. Efco Tokyo General Insurance Co. Ltd.,  
Through : Divisional Manager,  
Office at – Nakshtra Building, 150 Ft. Ring Road,  
Raiya Exchange, Rajkot.

**Opponents....**

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Subject :- To obtain Compensation of Rs.28,58,000/-  
u/s.166 of the M. V. Act.  
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**Appearance :**

For the claimant(s)	Ld. Adv. Mr. B.N.Thesia.
For Opponent Nos. 1.	Ld. Adv. Mr. S.D.Chavda.
For Opponent No.2 & 5.	None
For Opponent No.3-Insurer	Ld. Adv. Mr. V.H.Kanjaria.
For Opponent No.4.	In personal.
For Opponent No.6-Insurer	Ld. Adv. Mr. V.S.Jethwa.

**MAC Petition No.14 of 2021:-****Exh.-89**

1. Kamlsindh alias Kamlesh Kalia Neenama, (as per Exh.-117)  
Aged about - 25 years,  
Occu.- Labourer,  
R/o. Machhaliya, Dist. Zabuva,(M.P.),  
Now at Khareda, Tal. Keshod, Dist. Junagadh.

**Claimant....****Versus****Driver-Owner and Insurer of Ecco-Car No.GJ-03-KP-0485 :-**

1. Mohsinkhan Salimkhan Belim,  
Aged: Adult, Occu. -Driving,  
Religious: -,  
R/o. Movana Gate, Dudhva Street,  
Tal. Keshod, Dist. Junagadh.
2. Rakesh Maheshbhai Mor,  
Aged: Adult, Occu. Agriculture/Business,  
Religious: -,  
R/o. VC Plot, Nr, Station,  
Dhoraji, Dist. Rajkot.
3. I.C.I.C.I. Lombard General Insurance Com. Ltd.  
Through: Manager,  
Office at- Zodiaq Square, 3<sup>rd</sup> Floor,Office No. 7/9,  
Opp. Guru-dwara, S.G.Road, Bodakdev, Ahmedabad.

**Driver-Owner and Insurer of Zen-Car No.GJ-05-AR-4082 :-**

4. Nitalbhai Jashavantbhai Joshi,  
Aged Abt.: 33, Occu. -Service,  
R/o. Sahjanand Society No.2, Street No.5,  
Block No. 63, Junagadh.
5. Tushar Hareshbhai Thakar,  
Aged Abt.: 43, Occu. -Service,  
R/o. Nr, Vadla Fatak, Main road,  
Karadiya Chhatralay, Room No. 303,  
Timbavadi, Junagadh.

6. EfcO Tokyo General Insurance Co. Ltd.,  
Through : Divisional Manager,  
Office at – Nakshtra Building, 150 Ft. Ring Road,  
Raiya Exchange, Rajkot.

**Opponents....**

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Subject :- To obtain Compensation of Rs.23,58,000/-  
u/s.166 of the M. V. Act.

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**Appearance :**

For the claimant(s)	Ld. Adv. Mr. B.N.Thesia.
For Opponent Nos. 1.	Ld. Adv. Mr. S.D.Chavda.
For Opponent No.2 & 5.	None
For Opponent No.3-Insurer	Ld. Adv. Mr. V.H.Kanjaria.
For Opponent No.4.	In personal.
For Opponent No.6-Insurer	Ld. Adv. Mr. V.S.Jethwa.

**~: COMMON JUDGMENT :~**

- The claimants of the both the claim petition are sustained injuries out of the same accident occurred on 21/07/2020, and have filed the respective claim petitions to recover the compensation amounts, as stated in the title clause of the respective claim petitions against the opponents in this Tribunal. All these claim petitions were consolidated by allowing the application at Exh.-39 filed in MACP No.13/2021.
- The claim petition contains following facts : -  
**[A] Accident as described :**

On 21/07/2020, the claimant, along with Kamlasindh alias Kamlesh( claimant of mcap no.14), were proceeding from Kharada to Keshod on a motorcycle no. GJ- 11-AC- 1561. The rider was driving moderately on his correct side of the road. Then at around 4:15 , when both reached near Balagam Patiya, Mangrol-Keshod road, one Maruti Zen car GJ- 05-AR- 4082, which was being driven very rashly by its driver, was in leading position of the motorcycle and at that time, one Eeco car GJ-03-KP-0485 came speedily from Keshod side and both the four-wheelers collided each other on head sides. Resultantly, the Eeco car spin on the road and dashed to the claimant's motorcycle. Both of Motor-cyclers fell down in nearby trench and got serious head injuries, with bleeding.

Due to the collision of their heads with the Eeco car, both got compressed fractures in their heads. Soon after the accident, both were taken to Keshod Government Hospital and then referred to Junagadh Government Hospital. They were examined at Junagadh and again referred to Rajkot Government Hospital. After discharging from Rajkot Government Hospital, the claimant was to admit in Gokul Hospital for neurosurgery and remain admitted there for 20

days. The claimant was operated twice. After his discharge from the hospital, the claimant needs to go for post-surgery treatment and he had to stay at home for six months because of his injuries.

Whereas the claimant of claim petition No. 14/2021 also underwent the same emergency medical process, being transferred to Gokul Hospital for neurosurgery and remain admitted there for 15 days. The claimant was operated. After his discharge from the hospital, the claimant needs to go for post-surgery treatment and he had to stay at home for six months because of his injuries.

**3. [B] Reasons for the claim :**

**For MACP No. 13/2021**

At the time of accident, the claimant was 20 years young one and earning by labourer work. He was earning Rs. 600/- a Day, monthly around 18,000/-, which was only livelihood of his family. According to the claimant as he sustained grievous injuries and got compressed fractured in his head, he got permanent 100% impairment. It is case of the claimant that he was hale and hearty but due to injuries, he suffered a lot, that he got permanent disability and lost

function disability for result of which he lost his earning, that he had to incur expenditures as described and therefore prays compensation worth Rs. 28,58,000/- with interest and cost.

**For MACP No. 14/2021**

At the time of accident, the claimant was 25 years young one and earning by labourer work. He was earning Rs. 600/- a Day, monthly around 18,000/-, which was only livelihood of his family. According to the claimant as he sustained grievous injuries and got compressed fractured in his head, he got permanent 100% impairment. It is case of the claimant that he was hale and hearty but due to injuries, he suffered a lot, that he got permanent disability and lost function disability for result of which he lost his earning, that he had to incur expenditures as described and therefore prays compensation worth Rs. 23,58,000/- with interest and cost.

4. Opponents were duly served with the notices. With the exception of Opponents No. 2 and 5, the following parties filed written objections:

4.1 **The Opponent No. 1** has filed the written statement vide Exh.-23, wherein he has denying the facts alleged in main claim petition and also denied the age, income, nature of

occupation as well as negligence on his part. It has contested that the averments made by the claimant, are not true and monthly income, nature of injuries and subsequent disablement sustained by the claimant are also denied. Further stated that actual accident happened due to sole negligency of driver of Maruti Zen-Car. Further it is averred that this vehicle is insured with opponent No. 3 and if any liability arises then this opponent shall be liable to indemnified the claim amount. All-in-all requested to reject the claim petition against him with cost.

**4.2 Opponent No. 6-insurer appeared** and filed the written statement vide Exh.-28, and denying the facts alleged in main claim petition and also denied the age, income, nature of occupation as well as negligence on part of Opponent No.4. It has contested that the averments made by the claimant, are not true and hence they are denied ; that the age, occupation, monthly income, nature of injuries, subsequent disablement sustained by the claimant are also denied. Further it is averred that the Opponent No.4 was not holding valid and effective driving license at the time of impugned accident and it is breached of the policy conditions so the risk of the

insured was not covered; further it is contended that the applicant was the sole author of the accident, having driven Motorcycle No. **GJ-11-AC-1561** in a rash and negligent manner. Consequently, the opponent denies any liability for compensation. Furthermore, the opponent points to the involvement of vehicle No. **GJ-33-KP-0485**. It is submitted that the driver of said vehicle was either solely responsible or contributed significantly to the accident. Therefore, the opponent requests the Tribunal to determine the percentage of negligence for each drivers and/or applicant in apportion liability accordingly. All-in-all requested to reject the claim petition with cost.

**4.3 Opponent No. 3**-insurer of Vehicle appeared and filed the written statement vide Exh.-38, and denying the facts alleged in main claim petition and also denied the age, income, nature of occupation as well as negligence on part of Opponent No.1. It has contested that the averments made by the claimant, are not true and hence they are denied ; that the age, occupation, monthly income, nature of injuries, subsequent disablement sustained by the claimant are also denied. Further it is averred that the Opponent No.1 was not

holding valid and effective driving license at the time of impugned accident and it is breached of the policy conditions so the risk of the insured was not covered; further it is contended that the applicant was the sole author of the accident, having driven Motorcycle **No. GJ-11-AC-1561** in a rash and negligent manner. Consequently, the opponent denies any liability for compensation. Furthermore, the opponent points to the involvement of vehicle No. **GJ-05-AR-4082**. It is submitted that the driver of said vehicle was either solely responsible or contributed significantly to the accident. Therefore, the opponent requests the Tribunal to determine the percentage of negligence for each drivers and/or applicant in apportion liability accordingly. All-in-all requested to reject the claim petition with cost.

**4.4 The Opponent No. 4** has filed the written statement vide Exh.-151, wherein he has denying the facts alleged in main claim petition and also denied the age, income, nature of occupation as well as negligence on his part. It has contested that the averments made by the claimant, are not true and monthly income, nature of injuries and subsequent disablement sustained by the claimant are also denied. Further stated that actual accident happened due to sole

negligency of driver of Eeco Car. Further it is averred that this vehicle is insured with opponent No. 6 and if any liability arises then this opponent shall be liable to indemnified the claim amount. All-in-all requested to reject the claim petition against him with cost.

5. The claimants of these claim petitions have produced following oral evidences, in claim petition No. 13/2021, claimant **Gula Bhima Dahma** has filed the affidavit at Exh.-45. Whereas the claimant of claim Petition No. 14/2021, The claimants have also produced following documentary evidence in support of the claim:-

**Documentary Evidence produced in MACP No. 13/2021**

<b>Sr. No.</b>	<b>Documents</b>	<b>Ex/Mark</b>
1.	Copy of Charge-sheet.	50
2.	Copy of R.C.Book of Vehicle No. GJ-03-KP-0485.	51
3.	Insurance Police for the vehicle No. GJ-03-KP-0485.	52
4.	Copy of R.C.Book of Vehicle No. GJ-05-AR-4082.	53
5.	Copy of driving license of Opponent No.4.	54
6.	Insurance Police for the vehicle GJ-05-AR-4082.	55
7.	F.I.R.	56
8.	Spot Panchnama.	57

9.	Medical Discharge summary of Gulabhai.	58 & 60
10.	Final Medical Bill of Gulabbhai.	59 & 61
11.	City Scene report.	62 to 64
12.	OPD old case at Gokul Hospital.	65 to 70
13.	Copy of learning license.	71
14.	Copy of Aadhar Card of Gulabhai.	72
15.	Medical bills.	73 to 97
16.	Medical bills.	120 to 138
17.	M.L.C. of Gulabhai.	98 & 99
18.	Disability Certificate.	142
19.	CT scan of brain reports.	100 to 115
20.	Driving license of Opponent No.1.	159

7. The claimant of this claim petition has produced following oral evidences, in claim petition No. 14/2021, claimant Kamlasindh alias Kamlesh Kalia Ninama has filed the affidavit at Exh.-41.

The claimants have also produced following documentary evidence in support of the claim:-

**Documentary Evidence produced in MACP No. 14/2021**

Sr. No.	Documents	Ex/ Mark
1.	M.L.C.	43
2.	Disability Certificate	84
3.	CT scan of brain, OPD etc. reports.	44 to 51
4.	Medical Bills	52 to 72
5.	Medical Discharge summary of Kamleshbhai Ninama.	73
6.	Final Medical bills.	74

7.	CT scan report, OPD etc. reports.	75 to 79
8.	Aadahr card of Kamlasindh.	80

6. The Opponents has taken deposition of Dr. Jayeshbhai Odedra, through Court commissioner appointed by the Court vide Exh.140 and deposition at Exh.-141.

Opponent No. 1 has deposed vide Exh.-145.

Opponent No. 4 has filed his affidavit vide Exh.-152.

7. Ld. Advocate of the claimants have filed the written argument at Exh.-153 and argued almost the same as per the claim petition, so same is not reiterated herein and cited the following citations.

(1) A.C.J. 2025 Supreme Court Page No. 1515.

(2) A.C.J. 2025 Supreme Court Page No. 3658.

7.1 On Contra, Ld. Advocate of the Insurer No.3 has filed the written argument at Exh.-157 and argued almost the same as per the written statment, so same is not reiterated herein and cited the following citations.

(1) 2012 ACJ 1305, SC in the case of Surender Kumar Arora V/s. Dr. Manoj Bisla.

(2) Civil Appeal No. 2526/2007, (SC) in the case of Oriental

Insurance Com. Ltd. V/s. Premlata Sukla.

7.2 On Contra, Ld. Advocate of the Insurer No.6 has filed the written argument at Exh.-158 and argued almost the same as per the written statment, so same is not reiterated herein and cited the following citations.

(1) The Oriental Insurance Com. Ltd. V/s. Meena Varial 2007 ACJ 1284 SC.

(2) Surender Kumar Arrora V/s. Manoj Bisla .

(3) Nishan Singh V/s. Oriental Insurance Com. Ltd. 2018 AIOL 3332.

(4) 2025 (o) AIJEL-SC-76241 Sithara N.S. V/s. Sai Ram General Insurance Com. Ltd.

Heard, Ld Advocates for the respective parties.

**8.** In view of above pleadings and arguments in these claim petitiion following issues have been arises for the determination of these claim.

**8.1** Issues were framed at Exh.-31 in Claim petition No. 13/2021.

1. Whether it is proved that the claimant sustained grievous injuries and got permanent disabilities on account of rashness and negligence in driving on the part of the rider/driver of the vehicle involved in the accident ?

2. What amount, if any, the claimant is entitled to by way of compensation and from which of the opponents ?
3. What order ?

**8.2** Issues were framed at Exh.-30 in Claim petition No. 14/2021.

1. Whether it is proved that the claimant sustained grievous injuries and got permanent disabilities on account of rashness and negligence in driving on the part of the rider/driver of the vehicle involved in the accident ?
2. What amount, if any, the claimant is entitled to by way of compensation and from which of the opponents ?
3. What order ?

**9.** My common findings on the above issues are as under:-

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

**~: REASONS :~**

**Issue No.1 :~**

- 10. NEGLIGENCE :-** Negligence is implicit in an accident. The liability to pay compensation arises only on proof of negligence and the claimants have to show that the driver of the offending vehicle was negligent or at fault. However, the

claimants are not required to prove factum of negligence as it is required to be proved in a criminal case. So far as the point of negligence is concerned.

Admittedly, there occurred a head-on collision between Zen car No.GJ-05-AR-4082 and Eeco car No. GJ-03-KP-0485, followed by a two-wheeler rear-ending one of the cars. It is proved on record that after collision of the two cars, the Eeco car suddenly spined on the spot, and resultantly, the claimants proceeding on the motorcycle dashed to the Eco car. As per the claimant's testimony, the heads of both motorcycle riders collided with the Eeco car.

I have gone through the FIR (Exh.-56), Panchnama (Exh.-57), and charge-sheet (Exh.-50), but I would say this is not a case of sole negligence as opined by the police investigator. In a head-on collision, liability is rarely 100% on one party unless there is clear evidence of one vehicle being on the wrong side of the road. The evidences record reveals that both the four-wheelers suddenly stopped due to the initial head-on crash, and the motorcycle, which is the rear vehicle, could not forecast such a sudden warning.

Though the FIR and charge-sheet are against the driver of the Eeco Car bearing No. GJ-03-KP-0485, they are not

conclusive proofs of negligence. The Tribunal has to take a holistic view, considering all facts of the accident. The opponent No.1 i.e Mohshinkhan Salimkhan Belim, who is the first informant and driver of Eeco Car bearing No. GJ-03-KP-0485, managed to lodge the FIR only after 12 days of the accident only because of his muslim brothereen relations with the PSO Mr. Salim U. Dal. After the FIR, charge-sheet was mechanically prepared. Considering the damage on both collided cars, they show a asymmetrical impact and therefore, this is a case of **contributory negligence**, and the negligence liability can be split **50-50%** of both the car drivers. So far as the position of the claimant is concerned, for them this is a case of **composite negligence** of driver of Zen Car bearing No.GJ-05-AR-4082 and Eeco Car bearing No.GJ-03-KP-0485.

Therefore, I have no hesitation in holding contributory negligency as decided above. Hence, **I decide issue No.1 for both the claim petition in affirmative.**

**11. Issues No.2 & 3 FOR QUANTUM:-**

It is well settled that in case of motor accident claim, an endeavor is made to put the claimant/s in the pre-accidental position. The damage to be awarded are to be adequate in

terms of money so that the injured/claimants is/are put in the same position had they not suffered the loss on account of wrong of the opponent, though no amount of compensation can restore the loss of limb or experience of pain or loss of life.

The heads under which compensation is awarded in personal injury cases, are the following:-

**Pecuniary damages:-**

(A) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food and miscellaneous expenditure.

(B) Loss of earning (and other gains) which the injured would have made had he/she not been injured, comprising.

(a) Loss of earnings during the period of treatment.

(Actual loss of income)

(b) Loss of future earnings on account of permanent disability.

(c) Future medical expenses.

**Non-Picuniary damages:-**

(X) Damage for pain, shock and suffering as consequence of injuries.

(Y) Loss of amenities (and/or loss of prospects of marriage)

(Z) Loss of expectation of life. (shortening of normal longevity)

**12. For MACP No. 13/2021 :**

**Loss of future earning on account of physical disability :**

The claimant has sought award of compensation of Rs.28,58,000/- with interest and costs and he has asked amount describing pecuniary and non-pecuniary loss. In his deposition, the claimant has stated that he was aged 20 years at the time of accident, to believe such thing I have relied upon the Aadhar card produced vide Exh.-72, wherein date of birth mentioned as 01/01/2003, whereas the impugned accident occurred on 21/07/2020, so he was aged around **17 Yrs. 06 Months 20 Days**, which shows that the claimant was minor at the time of accident. So far as the compensation to the minor applicant in case of accidental injury is concerned, following case law applies. The Honourable Supreme Court in the case of **Master Mallikarjun V/s. Divisional Manager, National Insurance Company Limited and Anr.** reported in **Civil Appeal No.7139 of 2013** has held as under :

*“12. Though it is difficult to have an accurate assessment of the compensation in the case of children suffering disability on account of a motor vehicle accident, having regard to the relevant factors, precedents and the approach of various*

*High Courts, we are of the view that the appropriate compensation on all other heads in addition to the actual expenditure for treatment, attendant, etc., should be, if the disability is above 10% and up-to 30% to the whole body, Rs.3 lakhs; upto 60%, Rs.4 lakhs; upto 90%, Rs.5 lakhs and above 90%, it should be Rs.6 lakhs.....*

That In light of the principles established by the Hon'ble Supreme Court in **Master Mallikarjun V/s. Divisional Manager, National Insurance Co. Ltd.**, the compensation for a minor child must be assessed based on the structured scale for non-pecuniary damages. In the present case, the medical evidence like MCL at Exh.-98 & 99, Disability Certificate at Exh.-142 and Medical reports/discharge summary at **Exh.-58 to 60, 62 to 70 and 98 to 115** confirm that the claimant sustained severe head injuries, resulting in persistent neurological complications and chronic migraines.

A **compression fracture** in the skull occurs when the bone is driven inward toward the brain. It often causes a **Traumatic Brain Injury (TBI)** that can lead to temporary or permanent disability. The severity of the disability depends on the location of such fracture and on seeing whether underlying brain tissues were damaged. In case on hand, if we see disability certificate it shows that "The medical evidence, supported by the disability certificate and findings of

Neurotrauma Surgeon **Dr. Jayesh A. Odedra**, establishes that claimant sustained severe traumatic brain injuries including a **large parenchymal haematoma** in the right temporal lobe and **diffuse axonal injury** across the bilateral frontal lobes. Clinical examinations reveal a permanent **25 cm surgical scar** with a persistent **pus-discharging sinus** and a significant palpable bony defect from the craniotomy. The claimant's condition is further complicated by **frequent epileptic fits** resistant to medication, memory loss, speech difficulty (**dysphasia**), and **left-side paresis** (weakness). Given these profound neurological deficits and the resulting inability to perform manual labor, this Tribunal assesses the functional disability at **70% partial permanent neurological deficit** of the body as a whole.

In cases of depressed skull fractures, potential long-term impairments include cognitive issues, physical deficits, emotional change, neurological complications, and cosmetic deformity.

The medical documentation reveals that the claimant sustained a fracture of the right clavicle, for which he underwent surgery. As a result of the vehicular accident, the claimant has suffered a permanent partial disability. Dr. Jayesh

A. Odedra has issued a certificate assessing a 70% partial permanent neurological deficit. However, following the settled principles for converting limb or organ-specific disability to the body as a whole, this Tribunal is of the view that it is appropriate to assess the **functional disability at 61% for the whole body.**

According to the **Master Mallikarjun** ratio, where the disability of a minor falls within the bracket of **above 60% and up to 90%**, the claimant is entitled to a consolidated lump sum of **Rs. 5,00,000** for pain and suffering, loss of amenities, and mental agony. In addition to this, even in the absence of specific documentary evidence for incidental costs, the claimant is entitled to reimbursement for medical expenses, transportation, and special diet. Therefore, considering the **61% disability**, this Tribunal awards a total compensation of **Rs. 5,00,000**, plus actual medical expenses and ancillary charges, as a just and reasonable amount to secure the minor's future welfare.

**Medical Expenses :**

The medical evidence produced includes the M.L.C. at Exh. 98 & 99, the Discharge Summary at Exh. 58 to 60, and

various diagnostic records, including CT scans of the brain and OPD reports (Exh. 62 to 70 and Exh. 100 to 115). These records substantiate the gravity of the injuries and the necessity of the treatment undergone.

Furthermore, the claimants have submitted a comprehensive set of medical vouchers and pharmacy receipts at Exh. 73 to 97 and 120 to 138, along with the Final Medical Bills at Exh. 59 to 61. Upon verification of these bills, the total expenditure incurred for hospitalization, surgery, and medicines is found to be legitimate. Consequently, this Tribunal grants the **total medical expenses amounting to Rs. 6,51,368/-**.

In accordance with the mandates of the Hon'ble Supreme Court in Master Mallikarjun V/s. Divisional Manager, National Insurance Co. Ltd., compensation for a minor child is structured to provide a dignified life despite permanent handicaps. In the present case, where the minor claimant has sustained significant injuries resulting in a disability exceeding 60%, this Tribunal awards a lump sum of Rs. 5,00,000 for non-pecuniary damages, including pain and suffering, mental agony, and the loss of amenities and future

happiness. Furthermore, recognizing the substantial financial burden of specialized treatment, the Tribunal grants an additional **Rs. 6,51,365/-** toward actual medical expenses. Consequently, a total compensation of **Rs. 11,51,365/-** is awarded as a just and reasonable amount to ensure the minor's ongoing care and future welfare.

The break-up of quantum of compensation under the various heads is as follows:-

<b>Sr. No.</b>	<b>Particulars</b>	<b>Amount (In Rs.)</b>
1	Future Loss of Income(All heads including)	Rs. 5,00,000/-
2.	Medical Expenses	Rs. 6,51,365/-
<b>Total:-</b>		<b>Rs.11,51,365/-</b>

**13. For MACP No. 14/2021 :**

**Loss of future earning on account of physical disability :**

The claimant has sought award of compensation of Rs.23,58,000/- with interest and costs and he has asked amount describing pecuniary and non-pecuniary loss. In his deposition, the claimant has stated that he was aged 25 years at the time of accident, to believe such thing. I have relied upon the **Election Card (Exh. 80)** produced in **Claim Petition No. 14/2021**, which records the claimant's date of

birth as **XX/XX/1992**. Given that the accident occurred on **July 21, 2020**, the claimant was approximately **28 years old** at the time of the incident. Since this age falls within the bracket of **26 to 30 years**, a **multiplier of 17** is applicable as per established legal principles. Consequently, the same has been taken into consideration for the calculation of compensation.

That the claimant deposed that he was earning Rs. 18,000/- per month by labourer work in this regard, the claimant has not produced any proof. In absence of exact proof for income of the applicant, taking into consideration the Age and occupation as well as minimum wage rate, this Tribunal is of the view to considered **Rs. 8,500/-** income per month at the time of accident. Therefore, same is considered.

Regarding the assessment of physical disability sustained by the claimant, the record includes the Injury Certificate at Exh. 43 and the Disability Certificate at Exh.-84 in consolidated MACP No. 14/2021.

A **compression fracture** in the skull occurs when the bone is driven inward toward the brain. It often causes a **Traumatic Brain Injury (TBI)** that can lead to temporary or permanent

disability. The severity of the disability depends on the location of such fracture and on seeing whether underlying brain tissues were damaged. In case on hand, if we see disability certificate it shows that '**multi-fragmented fractures** of the frontal and parietal bones, orbital walls, and maxillary sinus, along with **Extradural Haemorrhage (EDH)**. He underwent emergency **Bifrontal Decompression** and **EDH Evacuation**, leaving a permanent **20 cm coronal scar** and a palpable bone defect. Current clinical findings of **gliosis** (brain scarring), memory loss, and giddiness confirm a **40% partial permanent neurological deficit** of the body as a whole.

In cases of depressed skull fractures, potential long-term impairments include cognitive issues, physical deficits, emotional change, neurological complications, and cosmetic deformity.

The medical documentation reveals that the claimant sustained a fracture of the right clavicle, for which he underwent surgery. As a result of the vehicular accident, the claimant has suffered a permanent partial disability. Dr. Jayesh A. Odedra has issued a certificate assessing a 40% partial permanent neurological deficit. However, following the

settled principles for converting limb or organ-specific disability to the body as a whole, this Tribunal is of the view that it is appropriate to assess the **functional disability at 22% for the whole body.**

So considering the guidelines of the Hon'ble Supreme Court of India in the case of *Sarla Verma Vs. Delhi Transport Corporation* multiplier of '17' can be applied. Thus, considering his monthly income as Rs.8,500/- and 22% as his partial permanent disability for whole body, his monthly future economic loss would come to Rs.1,870/- i.e. yearly Rs.22,440/- and applying 17 as a multiplier, it comes to **Rs.3,81,480/-** as his future economic loss.

#### **Medical Expenses :**

The medical evidence produced includes the M.L.C. at Exh. 43, the Discharge Summary at Exh. 73, and various diagnostic records, including CT scans of the brain and OPD reports (Exh. 44 to 51 and Exh. 75 to 79). These records substantiate the gravity of the injuries and the necessity of the treatment undergone.

Furthermore, the claimants have submitted a comprehensive set of medical vouchers and pharmacy receipts at Exh. 52 to

72, along with the Final Medical Bills at Exh. 74. Upon verification of these bills, the total expenditure incurred for hospitalization, surgery, and medicines is found to be legitimate. Consequently, this Tribunal grants the **total medical expenses amounting to Rs. 4,69,172/-**.

**Pain, shock & suffering :**

The Injury/MLC at Exh.43 and Disability Certificate at Exh.84 and other evidence herein shows that the severity of the injury, specifically the **compression fracture of the skull** which involved the bone being driven inward toward the brain, the claimant undeniably endured immense physical agony and mental trauma. Such an injury, often resulting in **Traumatic Brain Injury (TBI)**, carries a high risk of long-term neurological complications and permanent disability. Considering the intensity of the trauma, the duration of hospitalization, and the subsequent recovery process, this Tribunal deems it appropriate to award **Rs. 20,000** under the head of **Pain, Shock, and Suffering**.

**Actual Loss of income and Attendant charges, Special Diet and Transportation:**

The claimant has produced extensive medical documentation alongside an expert medical opinion. Furthermore, the doctor was formally examined via a **Court Commissioner** to verify the clinical findings. Taking into consideration the severe nature of the injuries sustained, the medical testimony, and the required recovery period, this Tribunal finds it reasonable to assess the **actual loss of income for a period of 02 months**. Based on the established monthly income, an amount of **Rs. 17,000/-** is hereby awarded under the head of **Actual Loss of Income**.

Considering the nature of injury, someone would have attended the claimant during his treatment and thereafter for some time during follow-up treatment when he was outdoor patient, the claimant would have been advised to take special and nutritious food for quick recovery and would have hired special vehicle to reach the hospital for his treatment and follow-up treatment and therefore, I think it just and proper to award **Rs.10,000/-** under the head of Attendant charges, Special Diet and Transportation.

In all, the claimant is entitled to Rs.8,97,652/- as compensation under various heads. I know that the claimant has sought compensation of Rs. 23,58,000/- but to my mind, for the reasons stated above, this figure of just and proper compensation would come to Rs.8,97,652/-.

The break-up of quantum of compensation under the various heads is as follows:-

<b>Sr. No.</b>	<b>Particulars</b>	<b>Amount (In Rs.)</b>
1	Future Loss of Income	Rs. 3,81,480/-
2.	Medical Expenses	Rs. 4,69,172/
3	Pain, Shock & Suffering	Rs.20,000/-
4	Actual Loss of income	Rs.17,000/-
5	Attendant, Special Diet & Transportation	Rs.10,000/-
<b>Total Compensation:-</b>		<b>Rs.8,97,652/-</b>

#### **14. LIABILITY :-**

**14.1** The evidence regarding the ownership, insurance, and licensing of the offending vehicle is summarized as follows:

- **Ownership (R.C. Book):** The R.C. Book produced at Exh. 51 reveals that the car bearing registration No. GJ-03-KP-0485 was owned by Opponent No. 2, Rakeshbhai Maheshbhai Mor, at the time of the accident.

- **Driving License:** Upon perusal of the Driving License at Exh.159, it is established that Opponent No. 1, who was driving the car at the material time, held a valid and effective driving license.
- **Insurance Policy:** The Insurance Policy at Exh. 52 reveals that the vehicle was insured by Opponent No. 3, ICICI Lombard General Insurance Co. Ltd. The policy was valid from 29/09/2018, to 28/09/2021. Since the accident occurred on 21/07/2020, the policy was in force and effectively covered the risk on the date of the incident.

**14.2** In the same way as far as the evidence regarding the ownership, licensing, and insurance of the second involved vehicle is summarized as follows:

- **Ownership (R.C. Book):** The R.C. Book produced at Exh. 53 reveals that the car bearing registration No. GJ-05-AR-4082 was owned by Opponent No. 5, Thakar Tusharbhai, at the time of the incident.
- **Driving License:** Perusal of the Driving License at Exh. 54 reveals that the driver, Nital J. Joshi, held a valid and effective driving license on the date of the accident.

- **Insurance Policy:** The Insurance Policy produced at Exh. 55 reveals that the vehicle was insured with Opponent No. 6, IFFCO-TOKIO General Insurance Co. Ltd. The policy was valid for the period of 04/01/2020, to 03/01/2021. As the accident occurred on 21/07/2020, the risk was fully covered under the said policy at the material time.

**14.3** As discussed above, this Tribunal has held that both collided cars, they show a asymmetrical impact and therefore, this is a case of **contributory negligence**, and the negligence liability can be split **50-50%** of both the car drivers. So far as the position of the claimant is concerned, for them this is a case of **composite negligence** of driver of Zen Car bearing No.GJ-05-AR-4082 and Eeco Car bearing No.GJ-03-KP-0485.

**15. INTEREST :**~ So far as the interest is concerned, as per the judgment of Honourable Supreme Court in the case of **Yeramma & others V/s. G. Krishnamurthy and another**, reported in **2014 ACJ - 2161**, the interest @ 8% should be awarded. Hence, I decide issue No.2 & 3 of all these claim petition accordingly and pass the following final order :

**~: O R D E R :~**

1. Both the Claim Petitions are partly allowed.
2. The applicant of MACP No.13/2021 does recover an amount of **Rs.11,51,365/- (Rupees Eleven Lakhs Fifty One Thousand Three Hundred Sixty Five only)**, from the Opponents No. 1 to 6, jointly and severally, in proportion of negligency as decided, **50%** on part of driver/owner/insurer of Zen Car bearing No.GJ-05-AR-4082 and **50%** on the part of driver/owner/insurer of Eeco Car bearing No.GJ-03-KP-0485 with interest @ 8% per annum from the date of filing the petition till realization of awarded amount along with proportionate costs.
3. Whereas applicant of MACP No.14/2021, does recover an amount of **Rs.8,97,652/- (Rupees Eight Lakhs Ninety Seven Thousand Six Hundred Fifty Two Only)**, from the Opponents No. 1 to 6, jointly and severally, in proportion of negligency as decided, **50%** on part of driver/owner/insurer of Zen Car bearing No.GJ-05-AR-4082 and **50%** on the part of driver/owner/insurer of Eeco Car bearing No.GJ-03-KP-0485 with interest @ 8% per annum from the date of filing the petition till realization of awarded amount along with proportionate costs.
4. The opponents are liable to pay compensation to the applicants jointly and severally as decided and they are directed to deposit the amount in the office of this Tribunal within 30 days and as per the direction of the **Hon'ble**

**Supreme Court of India, in Writ Petition(Civil) No. 534/2020**, the opponent/s are directed to deposit the awarded amount through R.T.G.S. or N.E.F.T. as per details given below :-.

**Name of Beneficiary** : Motor Accident Claim Tribunal (Auxiliary), Keshod : **Account Number** : 40742882423

**IFSC Code** : SBIN0060052

5. N.F.L. amount, if any paid, be deducted from the awarded amount.
6. On realization of the above said amount, deficit court fees, if any, shall be recovered.
7. On depositing the said amount, it shall be distributed as under for both MACP No. 13/2021 and 14/2021:  
**30%** amount be paid to the claimant/s in cash by A/c. Payee Cheque after due verification and remaining **70%** amount be invested in any Nationalized Bank as per his choice and in his name in separate Fixed Deposit Receipt for the period of **FIVE YEARS**. The claimants shall be entitled to receive the periodical interest thereon.
8. It is further ordered that the claimants will not be entitled to withdraw the said F.D.R. before its maturity date or to have loan thereon without prior permission of this Tribunal. Further, the concerned Bank will be under obligation to release the said F.D.R. on the date of its maturity without requiring release order from the Tribunal.

9. The opponents are also directed to scrupulously follow the direction given by the Hon'ble High Court in the case of **Smt. Hansaguri Prafulchandra Ladhani & Ors. vs. The Oriental Insurance Co. Ltd.** reported in **2007(2) G.L.H. Page 291** with regard to computation of interest by spreading the amount over the relevant year from the date of claim petition till the date of deposit and deduction of Tax at Source on the amount of interest.
10. The opponents to bear their own costs and the opponents shall pay proportionate costs to the applicants.
11. Award be drawn accordingly.
12. Copy of this Judgment be kept in the MACP No. 14/2021.

Signed and pronounced in open Court today, this 13<sup>th</sup> day of May, 2026.

Date : 13/05/2026.  
Place : Keshod.

#PK

[ Harsh Balkrishna Trivedi ]  
M.A.C.T. [Aux.] and  
Additional District Judge,  
Junagadh at Keshod.  
[UIC No. GJ-00576]