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Before the

MOTOR ACCIDENT CLAIMS TRIBUNAL (Aux)

District Court Kheda at Nadiad.

~: M.A.C.Ps. Group :~

No.	M.A.C.P. No.	Section	Claim of Rs.
1	62/2022	166	20,00,000/-
2	68/2022	166	20,00,000/-

APPLICANTS:~

(1) M.A.C.P. No.62/2022 :-

Heirs & Legal representative of the deceased
Sohan Vaksi Koted

1 Vaksi Nanka Koted
Age : 60, Occupation : Nil,
2 Pavan Vaksi Koted
Age : 25, Occupation : Labour work,
3 Kalu Vaksi Koted
Age : 23, Occupation : Labour work,
4 Vinod Vaksi Koted
Age : 21, Occupation : Labour work,
All are residing at Pal Deval
Dungarpura, Rajasthan.

Versus

(Parties of Truck being No.GJ.18.G.6412)

1 Deleted (Savli Sureshbhai Bhajaji)
(Deleted as per order below at Ex.11).

2 Gandhinagar Division, Nursery Division,
At Sector 17, Ta. & District : Gandhinagar.

3 The New India Assurance Co. Ltd.,
At 2nd Floor, Vargo Complex,
Station Road, Nadiad.

(2) M.A.C.P. No.68/2022 :-

**Heirs & Legal representative of the deceased
Rakesh Shankar Kharadi**

1 Shankar Rupa
Age : 52, Occupation : Nil,

2 Savitadevi Shankar
Age : 50, Occupation : Household,
Both are residing at Kheda Ghati,
Post : Balicha, Udepur, Rajasthan.

Versus

(Parties of Truck being No.GJ.18.G.6412)

1 Deleted (Savli Sureshbhai Bhajaji)
(Deleted as per order below at Ex.11 In MACP No.62/2022).

2 Gandhinagar Division, Nursery Division,
At Sector 17, Ta. & District : Gandhinagar.

3 The New India Assurance Co. Ltd.,
At 2nd Floor, Vargo Complex,
Station Road, Nadiad.

(Parties of Motorcycle being No.RJ.12.AS.9287)

3. Pavan Vaksi Koted
Adult, Occupation : Driving,
Residence : Batka Faliu, Paldeval,
Ta. Dungarpura, Rajasthan.

4 ICICI Lombard General Insurance Co. Ltd.,
At 3rd Floor, 304 Beverly Arcade,
Opp. Woodland Hotel, Nadiad.

PPEARANCE:	
For the petitioners.	Ld. Advocate Shri K.B. Patel
For the New India Assurance Co. Ltd.,	Ld. Advocate Shri M.M. Malek
For the ICICI Lombard General Insurance Co. Ltd.,	Ld. Advocate Shri A.C. Shah

Petitions u/S. 166 of the M.V.Act.

~: Common Judgment :~

1 Present Motor Accident Claim Petitions are preferred under Section-166 of the Motor Vehicle Act, for getting compensation of Rs.20,00,000/-, & Rs.20,00,000/- respectively.

2 As both the Claim Petitions have arisen out of one and same motor accident and incident, the facts and law involved are the same, the evidence lead by the parties and arguments submitted by the respective Ld. Advocates for the parties are similar. Now It is pertinent to note that both these claim petitions are arising out of the same accident and evidence is recorded individually in each claim petition. However, considering the law laid down by the Hon'ble Gujarat High Court in case of ***New India Assurance Com. Ltd. V/s Rajivkumar Omprakash Sultaniya, passed in First Appeal No.2460 of 2021, dated 28/10/2021***, both the claim petitions arising out of the same accident are decided by this common judgment.

3 The brief facts of the petitions are that on 12.05.2018, deceased- Rakesh Shankar Kharadi was pillion rider on

the Motorcycle bearing registration No.RJ.12.AS.9287 and deceased – Sohan Vaksi Koted was plying the said Motorcycle and when they reached near the place of accident, at that point of time, driver of opponent No.1 parked his Truck bearing registration No.GJ.18.G.6412 on the road without any Indicator & reflector and because of that rider of Motorcycle dashed his Motorcycle with the stationary Truck from behind as a result accident occurred and in the said accident, deceased sustained serious injuries on various parts of the body and ultimately deceased succumbed to the said injuries sustained by them.

4 The summons of the claim petitions were served upon the opponents. Opponent No.1 is deleted as per order below at Ex.11. Opponent Nos.2 & 4 chose not appeared before this Tribunal. Opponents New India Assurance Company and ICICI Lombard General Insurance Company appeared through its respective Ld. Advocates and filed Written Statements, which are produced on record and denied the age, income and fact of the claim petition and averments made in the claim petition.

5 From the above referred pleadings of the parties, the following common issues are required to be determined :-

1. Whether the applicants prove that, deceased died due to rash and negligent driving of the driver of the vehicle involved in the vehicular

accident as contended ?

2. Whether the applicants are entitled to get compensation ? If yes, what amount and from whom ?

3. What award and order ?

6 My findings to the above issues are as under :

1.As per decision.
2.Partly in affirmative.
3.As per final order.

Issue No.1 :

7 In order to prove negligence, the claimants have produced the following documents :-

No.	**Document**	**Exhibit/Mark**
	M.A.C. P. No.62/2022	
1	Affidavit	23
2	Copy of complaint	27
3	Copy of panchnama	28
4	Copy of inquest panchnama	29
5	Copy of P.M. Report	33/1
6	Copy of D.L.	30
7	Copy of Insurance Policy of Truck	31
8	Death certificate of deceased	26

No.	**Document**	**Exhibit/Mark**
	M.A.C. P. No.68/2022	
1	Affidavit	27
2	Copy of complaint	30
3	Copy of panchnama	31
4	Copy of inquest panchnama	32
5	Copy of P.M. Report	33/2
6	Copy of R.C. Book of Motorcycle	33
7	Copy of Insurance Policy of Motorcycle	34
8	Copy of R.C. Book of Truck	36

9	Copy of Insurance Policy of Truck	37
10	Copy of Charge sheet	48

8 So far the short facts of the present case are already been narrated above. Now it is pertinent to note here that, while deciding the point of negligence, it has to be born in mind that the negligence is required to be proved in claim petition u/s 166 of the Act only on the touchstone of the preponderance of probability and not beyond doubt. Above referred ratio is laid down by Hon'ble Apex Court in the cases of i) ***Bimla Devi v/s H.R.T.C.***, reported in ***AIR 2009 SC 2819*** and ii) ***Parmeshwari Devi v/s Amir Chand***, reported in ***2011 (11) SCC 635***.

9 I have heard the Ld. Advocates for the parties and perused oral, as well as, documentary evidence produced on record. The Ld. Advocates for both the Insurance Companies i.e. New India Assurance Co. & ICICI Lombard Insurance Co. have submitted written arguments at Ex.44, 68 & 70 and cited authorities. Ld. Advocate for the New India Assurance co. has submitted that rider of Motorcycle has dashed his Motorcycle with stationary vehicle from behind, therefore, rider of Motorcycle was solely negligent for the accident. On the other hand Ld. Advocate for the ICICI Lombard Insurance Co. has submitted that driver of Truck parked his vehicle on running road without any indicator & reflector, therefore, driver of Truck was solely negligent for the accident.

10 I have gone through the written arguments and authorities submitted by the Ld. Advocates for the parties for the negligence, just amount of compensation, P.S.S., multiply and liability etc.

10.1 Tribunal has great respect for the observations made by the Higher Forum and ratio laid down in the Judgments. This Tribunal is fully agree with the ratio laid down in the cited authorities. But, the reliance on the decision without looking into the factual background of the case before it, is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyze a decision and isolate from it the ratio decidendi. What is the essence in a decision, is its ratio and not every observation found therein, nor what logically flows from the various observations made in the Judgment.

10.2 Negligence means failure to exercise the required degree of care and caution expected of a prudent driver. Negligence is the omission to do something which a reasonable man, guided upon the considerations, which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do. Negligence is not always a question of direct evidence. It is an inference to be drawn from proved facts. Negligence is not an absolute term, but is a relative one, it is rather a comparative term. What may be negligence in one case may not be so in another. Where there is no duty to exercise care, negligence in the popular sense has no legal consequence. Where there is a duty to exercise care, reasonable care must be taken to avoid acts or omissions which would be reasonably foreseen to be likely to casual physical injury to person. The degree of care required, of course, depends upon the facts in each case. On these broad principles the negligence of drivers required to be assessed.

10.3 The claimant No.2 of MACP No.62/2022 and claimant No.1 of MACP No.68/2022 have produced their affidavits at Ex.23 & 27 respectively, wherein, the facts mentioned in the main Claim Petition are reproduced. It appears from their cross-examinations that they are not an eye-witness. Now, turning to the documentary evidence, the claimant have produced complaint and copy of *Panchanama*, it appears from the panchnama that vehicle Truck parked on the road without any indicator and it also appears that rider of Motorcycle dashed his vehicle with stationary vehicle – Truck from behind. It is an admitted position of fact that no eye-witness, the driver of Truck, who is the best person to depose on oath, have also not stepped in to the witness-box, therefore, adverse inference will have to be drawn.

10.4 Thus, on perusing the these oral, as well as, documentary evidence, it seems that the rider of Motorcycle dashed his Motorcycle with the stationary vehicle from the behind. On perusal of the Police papers, it can be said that to some extent the rider of Motorcycle was negligent, if the rider of Motorcycle had taken due care and had not driven his vehicle in rash and negligent manner and in excessive speed, he would not have lost control over the steering and the accident could have been avoided. In this case, looking to the evidence on record, it is an admitted position of fact that the offending vehicle must be in an excessive speed. Any driver is expected to exercise more care and duty when he was driving a vehicle on public road. The care expected of such a driver is not only higher, but is a greater and larger. He has to manage his vehicle, not only by speed, but by adjusting situation of the road. The driver of the vehicle owes more care and duty towards traffic rules. It is a cardinal principles that a person driving a motor vehicle on a road must drive the vehicle with reasonable care, strictly observing the traffic regulations and the rules of the road. The driver always be conscious of the motto "*except the unexpected*" and should be apprehensive of a vehicle from the opposite direction.

10.5 .No doubt, the driver of the stationary vehicle Truck should also be more vigilant, while parking such a vehicle on the road. As per The Motor Vehicles Act, no person in charge of a motor vehicle shall caused or allow the vehicle or any trailer to remain at rest on any road in such a position in such a conditions or in such circumstances as to caused or to be likely to caused dangers, obstruction or undue inconvenience to others users of the road. The driver of the stationary vehicle should have taken all possible precautions to park the vehicle on the correct side of the road and should park his vehicle on the *kuccha* strip so that the entire asphalt road would be left open and unobstructed for the other users of the highway and it is the duty of the concerned driver that every vehicle while in a public place during the period between half an hour after sunset and half an hour before sunrise and at any other time when there is not sufficient light to render clearly discernible person and vehicle on the road shall carry obligatory front lamps or to carry a rear lamp or a lamp illuminating the rear registration mark.

10.6 It clearly appears that the rider of Motorcycle dashed his Motorcycle with the stationary vehicle from the behind and the charge sheet is also filed against the driver of Truck, <u>but under the law of Tort, it is not always that the person against whom the charge sheet is laid, is the only person, who is to be held negligent</u>. Hence, considering the question of negligence in its right perspective, in this case, the rider of Motorcycle alone cannot be held solely responsible for the occurrence of the accident. Thus, in light of the factual scenario, as it emerges, this Tribunal feels it prudent to hold that, the driver of the stationary vehicle – Truck was also negligent for the occurrence of the accident. If any of the drivers would have taken due care, the accident could have been avoided. No doubt, driver of Truck should also be vigilant, while parked such a vehicle on running highway road at Night time, because the accident took place at about 12:30 night and the rider of Motorcycle should also be vigilant, while driving such a vehicle on highway in the night time, the driver of vehicle must drive his vehicle in proper light i.e. his vehicle should have proper light as per the provision of law, so that the driver of vehicle can see any object, vehicle, animal or any passer by on the road. Under the above circumstances, it can be presumed that the accident occurred on account of not following the traffic rules by both the sides.

Thus, looking to the evidence as a whole and peculiar facts and circumstances of the present case, this Tribunal feels it proper to hold that rider of Motorcycle bearing registration No. RJ.12.AS.9287 was negligent to the extent of 30%, whereas, driver of Truck bearing registration No.GJ.18.G.6412 was negligent to the extent of 70% for the occurrence, hence Issue No.1 is decided likewise.

Issue No.2 :-

M.A.C.P. NO. 62 OF 2022 :~

11 It is the case of the claimants that immediately before the accident, deceased was doing work in Ahemdabad and was earning Rs.17,000/- per month. But claimants have not produced any evidence to show that deceased was earning Rs.17,000/- per month. Hence considering the month & year of the accident i.e. October, 2021, the deceased is considered as unskilled category, his minimum wages income is assessed of Basic Rs.276/- and monthly Rs.9,048/-

12 Claimants have produced copy of Adhar Card of deceased at Ex.25, wherein, his date of birth is mentioned as 01.01.1996 and accident occurred on 03.10.2021, thus deceased was aged about 25 years, 09 month and 02 days i.e. 26 years running at the time of incident, therefore, claimants are entitled to get multiplier of '17' as held by the Hon'ble Apex Court in ***"Sarla Verma & Ors. V/s. Delhi Transport Corporation& Anr."*** reported in"2009 A.C.J.

1298" Further 40% prospective amount is required to be added, as per the latest decision of the Hon'ble Apex Court in case of ***"National Insurance Company Limited V/s. Pranay Sethi and Ors.,"*** in Special Leave Petition (Civil) No.25590 of 2014 decided on 31.10.2017", therefore, monthly income of the deceased, for the purpose of calculation compensation comes to Rs.12,667/-.

13 It is not in dispute that the deceased was unmarried and present claim petition was filed by his parents. Thus considering the particular facts of the present case, 1/2 amount is required to be deducted as personal expenditure of the deceased as held by the Hon'ble Apex Court in ***"Sarla Verma & Ors. V/s. Delhi Transport Corporation& Anr."*** reported in"2009 A.C.J. 1298". 1/2 amount from Rs.12,667/-, comes to Rs.6,333/- and net amount which falls in the share of claimants, comes to Rs.6,334/- p.m. In view of the above referred discussion, claimants are entitled for following amount under the head of future loss of income : (Rs.6,334/- x 12 months x 17 multiplier) = Rs.12,92,136/-.

14 In view of the above as held by the Hon'ble Apex Court in ***"National Insurance Company Limited V/s. Pranay Sethi and Ors.,"*** in Special Leave Petition (Civil) No.25590 of 2014 decided on 31.10.2017", wherein, it is held that 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. But it is pertinent to note here that as per the judgment of the Hon'ble Apex Court decided on 31.10.2017 in the case of ***Pranay Sethi***,(supra) the Hon'ble Apex Court held that the aforesaid amounts should be enhanced at the rate of 10% in every three years. As Six years have been passed from the date of the pronouncement of the Pranay Sethi’s case, hence this Tribunal deem it fit to enhance the amount to be paid under the conventional head at the rate of 20%. Therefore, as per the directions of the Hon’ble Supreme Court in Pranay Sheti’s case, claimants are entitled of Rs.18,000/- under the head of loss of estate and Rs.18,000/- under the head of funeral expenses.

15 Further as per judgment of Hon'ble Apex Court, as held by Hon'ble Apex Court in the case of **Magma General Insurance Co.Ltd., Vs. Nanu Ram @ Chuhru Ram & Ors. in Civil Appeal No.9581 of 2018**, claimant No.1 is father of the deceased, hence he is entitled for Filial Consortium. This Tribunal have gone through the judgment of the Hon'ble Apex Court in the case of Magma General Insurance Co.Ltd.,(supra), the Hon'ble Apex Court held that "***In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of Filial Consortium***"., Hence it is not in dispute that deceased was unmarried in the present case, hence considering the Judgment of the Hon’ble Apex Court, the applicant No.1

is entitled for the Filial Consortium. Therefore, claimant No.1 is entitled of Rs.48,000/- under the head of Filial Consortium. In view of the above referred discussions, claimants are entitled for the following amount as compensation:-

Rs.	12,92,136/-	Future loss of dependency.
Rs.	18,000/-	Loss of estate
Rs.	18,000/-	Funeral
Rs.	48,000/-	Filial Consortium
Rs	**13,76,136/-**	**Total Compensation.**

(2) M.A.C.P. NO. 68 OF 2022 :~

16 It is the case of the claimants that immediately before the accident, deceased was doing work in Ahemdabad and was earning Rs.17,000/- per month. But claimants have not produced any evidence to show that deceased was earning Rs.17,000/- per month. Hence considering the month & year of the accident i.e. October, 2021, the deceased is considered as unskilled category, his minimum wages income is assessed of Basic Rs.276/- and monthly Rs.9,048/-

17 Claimants have produced copy of Adhar Card of deceased at Ex.24, wherein, his date of birth is mentioned as 01.01.1993 and accident occurred on 03.10.2021, thus deceased was aged about 28 years, 09 month and 02 days i.e. 29 years running at the time of incident, therefore, claimants are entitled to get multiplier of '17' as held by

the Hon'ble Apex Court in ***"Sarla Verma & Ors. V/s. Delhi Transport Corporation& Anr."*** reported in"2009 A.C.J. 1298" Further 40% prospective amount is required to be added, as per the latest decision of the Hon'ble Apex Court in case of ***"National Insurance Company Limited V/s. Pranay Sethi and Ors.,"*** in Special Leave Petition (Civil) No.25590 of 2014 decided on 31.10.2017", therefore, monthly income of the deceased, for the purpose of calculation compensation comes to Rs.12,667/-.

18 It is not in dispute that the deceased was unmarried and present claim petition was filed by his parents. Thus considering the particular facts of the present case, 1/2 amount is required to be deducted as personal expenditure of the deceased as held by the Hon'ble Apex Court in ***"Sarla Verma & Ors. V/s. Delhi Transport Corporation& Anr."*** reported in"2009 A.C.J. 1298". 1/2 amount from Rs.12,667/-, comes to Rs.6,333/- and net amount which falls in the share of claimants, comes to Rs.6,334/- p.m. In view of the above referred discussion, claimants are entitled for following amount under the head of future loss of income : (Rs.6,334/- x 12 months x 17 multiplier) = Rs.12,92,136/-.

19 In view of the above as held by the Hon'ble Apex Court in ***"National Insurance Company Limited V/s. Pranay Sethi and Ors.,"*** in Special Leave Petition (Civil) No.25590 of 2014 decided on 31.10.2017", wherein, it is held that 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. But it is pertinent to note here that as per the judgment of the Hon'ble Apex Court decided on 31.10.2017 in the case of ***Pranay Sethi***,(supra) the Hon'ble Apex Court held that the aforesaid amounts should be enhanced at the rate of 10% in every three years. As Six years have been passed from the date of the pronouncement of the Pranay Sethi’s case, hence this Tribunal deem it fit to enhance the amount to be paid under the conventional head at the rate of 20%. Therefore, as per the directions of the Hon’ble Supreme Court in Pranay Sheti’s case, claimants are entitled of Rs.18,000/- under the head of loss of estate and Rs.18,000/- under the head of funeral expenses.

20 Further as per judgment of Hon'ble Apex Court, as held by Hon'ble Apex Court in the case of **Magma General Insurance Co.Ltd., Vs. Nanu Ram @ Chuhru Ram & Ors. in Civil Appeal No.9581 of 2018**, claimant Nos.1-2 are parents of the deceased, hence they are entitled for Filial Consortium. This Tribunal have gone through the judgment of the Hon'ble Apex Court in the case of Magma General Insurance Co.Ltd.,(supra), the Hon'ble Apex Court held that "***In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of Filial Consortium***"., Hence it is not in dispute that

deceased was unmarried in the present case, hence considering the Judgment of the Hon'ble Apex Court, the applicant Nos.1-2 are entitled for the Filial Consortium. Therefore, claimants No.1-2 are entitled of Rs.48,000/- each under the head of Filial Consortium. In view of the above referred discussions, claimants are entitled for the following amount as compensation:-

Rs.	12,92,136/-	Future loss of dependency.
Rs.	18,000/-	Loss of estate
Rs.	18,000/-	Funeral
Rs.	96,000/-	Filial Consortium
Rs	**14,24,136/-**	**Total Compensation.**

21 **Liability of MACP No.62/2022 :-** As far as liability of M.A.C.P No.62 of 2022 is concerned, Ld. Advocate for the opponent- New India Assurance Co. Ltd., submitted written arguments at Ex.44 and mainly contended that opponent No.1 driver of Truck bearing registration No.GJ.18.G.6412 was not possessed valid and effective driving licence at the time of accident and, therefore, also the opponent No.3- Insurance Company is not liable to pay any compensation and requested to exonerate the Insurance Company.

22 On the other hand Ld. Advocate for the claimant has submitted written arguments at Ex.43 and stated that driver of Truck – opponent No.1 possessed Three wheel, Tractor, MCWG & LMV at the time of accident, therefor, insurance Company is liable to pay the amount of

compensation.

23 I have heard the Ld. Advocates for the parties and perused the documentary evidence produced on record. Herein the present case copy of D.L. of driver of Truck is on record at Ex.40 and it appears from the document that driver of Truck possessed driving licence for non-transport Three wheel, Tractor, MCWG & LMV at the time of accident and drive vehicles under 7500 Kg but driver of Truck was not possessed driver licence for heavy vehicles like Truck. Herein the present case Ld. Advocate for the Insurance Company is examined concerned person from R.T.O vide Ex.39, wherein, he has stated that " આજરોજ સામાવાળા નં .૧ ટ્રક ડ્રાઈવર લાયસન્સની ડી.એલ.ની. એકસ્ટ્રેકટ કોપી આજરોજ લાવેલ છુ જે જોતા સુરેશભાઈ ડ્રાઈવર થ્રી વ્હીલર (નોન ટ્રાન્સપોર્ટ) ટ્રેકટર, મોટર સાયકલ વીથ ગીયર અને એલ.એમ.વી. વ્હીકલનાં લાયસન્સ ધરાવે છે. એલ.એમ.વી. લાયસન્સ ધારક ૭૫૦૦ કી.ગ્રા.થી નીચેનુ વજનનું વાહન ચલાવી શકે. સામાવાળા હેવી ટ્રકનું લાયસન્સ ધરાવતા નથી. આ રજુ કરેલ એકસ્ટ્રકેટ જોતા સદર વાહન ચાલક હેવી ટ્રક ચલાવવા લાયક નથી." said witness is also cross examined by the Ld. Advocate for the claimant, wherein, he has stated that " એ હું કહી શકુ નહી કે, ૫૬૬૦ કી.ગ્રા. વજનવાળુ વાહન અને ૧૬૨૦૦ કી.ગ્રા. વાળુ વાહન સામાવાળા ડ્રાઈવર ચલાવી શકે કે કેમ? ઉપરોકત હકીકત બાબતે મને જ્ઞાન

નથી. ” thus as per the deposition of the R.T.O it can be said that drive of the Truck was not possessed driving licence for heavy vehicles like Truk. But it is pertinent to note here that policy of Truck bearing registration No.GJ.18.G.6412 was in force at the time of accident. It is pertinent to note here that claimant is third party for the insurance company and as per ratio laid down by Hon'ble Apex Court in the case of **Pappu and Ors., Vs. Vinodkumar Lamba & Anr in Civil Appeal No.20962 of 2017 (arising out of Slp (C) No.29032 of 2015) decided on 19-01-2018** that " *IMPORTANTPOINTS * Onus primarily lies on the owner of the vehicle to establish that the driver was authorized by him to drive the vehicle and he had valid driving licence. Then only the onus shifts to the insurer to rebut the same. If the driver is not authorised or does not have valid licence, the insurer will not be liable to pay compensation.* ***Even if insurer is absolved of the liability to pay compensation, it can be directed to pay the same and recover from the owner***. "

24 Thus, from the above mentioned discussions and ratio laid down by the Hon'ble Higher Forum and particular facts of the present case, this Tribunal is of the opinion that opponent No.3- Insurance Company of Truck bearing registration No.GJ.18.G.6412 is directed to first pay amount of compensation in favour of the claimants and thereafter, insurance company can recover the amount of compensation from the owner and/or driver of the

offending vehicle.

25 As discussed above, this Tribunal has held that rider of Motorcycle bearing registration No. RJ.12.AS.9287 was negligent to the extent of 30%, whereas, driver of Truck bearing registration No.GJ.18.G.6412 was negligent to the extent of 70% for the occurrence. As deceased himself is held negligent to the extent of 30%, thus 30% amount is required to be deducted on the part of the deceased himself, thus deducting 30% amount i.e. Rs.4,12,840/- from the awarded amount. And as driver of Truck was negligent to the extent of 70% for the occurrence, hence owner is vicariously liable to pay compensation and at the time of accident the insurance of the said Truck was in force, therefore, the Insurance Company is liable to indemnify the owner, hence present opponents No.2 & 3 are jointly and severally liable to pay remaining 70% awarded amount i.e. **Rs.9,63,296/-** to the present claimants. Opponent No.1 is deleted as per order below at Ex.11. Hence, I decide issues No.2 partly in affirmative.

26 **Liability of MACP No.62/2022 :-** As far as liability of M.A.C.P No.68 of 2022 is concerned, Ld. Advocate for the opponent- New India Assurance Co. Ltd., submitted written arguments at Ex.68 and mainly contended that opponent No.1 driver of Truck bearing registration No.GJ.18.G.6412 was not possessed valid and effective driving licence at the time of accident and, therefore, also the opponent No.3- Insurance Company is

not liable to pay any compensation and requested to exonerate the Insurance Company.

27 On the other hand Ld. Advocate for the claimant has submitted that driver of Truck – opponent No.1 possessed Three wheel, Tractor, MCWG & LMV at the time of accident, therefor, insurance Company is liable to pay the amount of compensation.

28 I have heard the Ld. Advocates for the parties and perused the documentary evidence produced on record. Herein the present case copy of D.L. of driver of Truck is on record at Mark-39/1 and it appears from the document that driver of Truck possessed driving licence for non-transport Three wheel, Tractor, MCWG & LMV at the time of accident and drive vehicles under 7500 Kg but driver of Truck was not possessed driver licence for heavy vehicles like Truck. Herein the present case Ld. Advocate for the Insurance Company is examined concerned person from R.T.O vide Ex.40, wherein, he has stated that " આજરોજ સામાવાળા નં .૧ ટ્રક ડ્રાઈવર લાયસન્સની ડી.એલ.ની. એકસ્ટ્રેકટ કોપી આજરોજ લાવેલ છુ જે જોતા સુરેશભાઈ ડ્રાઈવર થ્રી વ્હીલર (નોન ટ્રાન્સપોર્ટ) ટ્રેકટર, મોટર સાયકલ વીથ ગીયર અને એલ.એમ.વી. વ્હીકલનાં લાયસન્સ ધરાવે છે. એલ.એમ.વી. લાયસન્સ ધારક ૭૫૦૦ કી.ગ્રા.થી નીચેનુ વજનનું વાહન ચલાવી શકે. સામાવાળા હેવી ટ્રકનું લાયસન્સ ધરાવતા નથી. આ રજુ કરેલ એકસ્ટ્રકેટ જોતા સદર વાહન ચાલક

હેવી ટ્રક ચલાવવા લાયક નથી.” said witness is also cross examined by the Ld. Advocate for the claimant, wherein, he has stated that “ એ હું કહી શકુ નહી કે, ૫૬૬૦ કી.ગ્રા. વજનવાળુ વાહન અને ૧૬૨૦૦ કી.ગ્રા. વાળુ વાહન સામાવાળા ડ્રાઈવર ચલાવી શકે કે કેમ? ઉપરોકત હકીકત બાબતે મને જ્ઞાન નથી. ” thus as per the deposition of the R.T.O it can be said that drive of the Truck was not possessed driving licence for heavy vehicles like Truk. But it is pertinent to note here that policy of Truck bearing registration No.GJ.18.G.6412 was in force at the time of accident. It is pertinent to note here that claimant is third party for the insurance company and as per ratio laid down by Hon'ble Apex Court in the case of **Pappu and Ors., Vs. Vinodkumar Lamba & Anr in Civil Appeal No.20962 of 2017 (arising out of Slp (C) No.29032 of 2015) decided on 19-01-2018** that " *IMPORTANTPOINTS * Onus primarily lies on the owner of the vehicle to establish that the driver was authorized by him to drive the vehicle and he had valid driving licence. Then only the onus shifts to the insurer to rebut the same. If the driver is not authorised or does not have valid licence, the insurer will not be liable to pay compensation. **<u>Even if insurer is absolved of the liability to pay compensation, it can be directed to pay the same and recover from the owner</u>**.* "

29 Thus, from the above mentioned discussions and ratio laid down by the Hon'ble Higher Forum and particular facts of

the present case, this Tribunal is of the opinion that opponent No.3- Insurance Company of Truck bearing registration No.GJ.18.G.6412 is directed to first pay amount of compensation in favour of the claimants and thereafter, insurance company can recover the amount of compensation from the owner and/or driver of the offending vehicle.

30 Further Ld. Advocate for the opponent No.5- ICICI Lombard General Insurance Co. Ltd., has argued that deceased is pillion rider on the Motorcycle and risk of pillion rider is not covered under the policy of Motorcycle, but herein the present case concerned person from ICICI Lombard General Insurance Co. Ltd., is cross examined by the claimants vide Ex.58, wherein, he has specifically admitted that "એ વાત ખરી છે કે, બનાવ બનેલ તે દિવસે ઓન ડેમેજ પોલીસી ચાલુ હતી. એ વાત ખરી છે કે, પહેલા વર્ષનું જે પ્રીમીયમ છે તે વખતે મોટર સાયકલની પાછળ બેસનારનું પ્રીમીયમ પણ લીધેલ છે. " Thus it is pertinent to note here that accident occurred on 03.10.2021 and risk of pillion rider is covered under the said policy, therefore, opponent No.5 – Insurance company is liable to indemnify the claimants.

31 As discussed above, this Tribunal has held that rider of Motorcycle bearing registration No. RJ.12.AS.9287 was negligent to the extent of 30%, whereas, driver of Truck bearing registration No.GJ.18.G.6412 was negligent to the

extent of 70% for the occurrence. Further, it is pertinent to note here that, the claimant is a third party in the accident i.e. he is not the driver of any of the vehicles. It is pertinent to refer the Hon'ble Supreme Court's recent Judgment viz. ***Civil Appeal No.4244 of 2015 [Arising out of SLP (C) No.14015/2010] – Khenyei v. New India Insurance Ltd***. In the said judgment, it is held that when there are two vehicles involved in an accident injuring a third party, it is a case of composite negligence. It has been held further that the extent of negligence of joint *tort-feasors* in such a case is immaterial for satisfaction of the claim of the plaintiff/claimant and need not be determined by the court and that however, in case, all the joint *tortfeasors* are before the court, it may determine the extent of their liability for the purpose of adjusting interse equities between them at appropriate stage. In the judgment viz. ***Hiraben Bhaga & Ors. v. Gujarat State Road Transport Corporation*** [1982 ACJ (Supp.) 414 (Guj.)], it is held that It is open to the impleaded joint *tortfeasor* to sue the other wrong doer after the decree or award is given to realize to the extent of others' liability. The said liability of respectively 70% and 30% is determined for inter se equity to be settled through the way shown in the above judgment. In the circumstances, except the opponent No.1, all the present opponents are jointly and severally liable to pay awarded amount, more particularly described above, to the present claimants. The opponent No.1 is deleted as per order below at Ex.11 in MACP No.62/2022. Hence, I decide issues No.2 partly in affirmative.

32 <u>**INTEREST**</u>:~ The awarded amount shall carry interest at the rate of 7.5% per annum from the date of the application till realization, and hence Issue No.3, I pass the following order in the interest of justice :-

~: O R D E R :~

1 The claim petitions are hereby partly allowed.

2 <u>**Claimants of MACP No.62 of 2022**</u> are entitled for Rs.9,63,296/- (Rupees Nine Lac, Sixty Three Thousand, Two Hundred and Ninety Six only), from the present opponents No.2 & 3, who are jointly and severally liable to pay awarded amount along with the proportionate cost with interest at the rate of 7.5% per annum from the date of filing of the petition till its realization. The opponent No.1 is deleted as per order below at Ex.11.

3 <u>**Claimants of MACP No.68 of 2022**</u> are entitled for Rs.14,24,136/- (Rupees Fourteen Lac, Twenty Four Thousand, One Hundred and Thirty Six only), from the present opponents No.2 to 5, who are jointly and severally liable to pay awarded amount along with the proportionate cost with interest at the rate of 7.5% per annum from the date of filing of the petition till its realization. The opponent No.1 is deleted as per order below at Ex.11 in MACP No.62/2022.

4 Insurance company i.e. New India Assurance Co. Ltd., of Truck bearing registration No.GJ.18.G.6412 is directed to first pay more particularly described above amount of compensation in favour of the claimants and thereafter, insurance company can recover the amount of compensation, which is paid by it, from the owner and/or driver of the offending vehicle Truck bearing registration No.GJ.18.G.6412.

5 The opponents are hereby directed to deposit awarded amount within 30 days of the order.

6 It is hereby further ordered to the opponents that, as per the guidelines of Hon'ble Supreme Court, the amount of award be deposited in the District Bank Account No.02900200000658, IFSC: BARB0NADIAD (the fifth letter is Zero), Bank of Baroda, Main Branch, Nadiad, through R.T.G.S. or NEFT, and the same shall be informed to the M.A.C.T. Branch, District Court, Kheda at Nadiad, through E.Mail at mact-courtkhe@gujarat.gov.in as per the purshis.

7 On depositing the amount in the Registry of this Tribunal, Registry is directed to first deduct the amount of deficit court fees, NFL if any.

8 **In M.A.C.P. No.62 of 2022**, from the awarded amount, 70% amount be given to the claimant No.1- father of the deceased and remaining 30% awarded amount be

equally distributed to the claimants No.2, 3 & 4 – brothers of the deceased .

9 **In M.A.C.P. No.68 of 2022**, from the awarded amount, equally amount be distributed to the claimants No.1 & 2- parents of the deceased.

10 Therefore, amount coming to the share of the claimants, 60% amount be invested as fixed deposit in any nationalized bank for initial period of five years and remaining 40% amount be paid to the applicants by account payee cheque/s forthwith.

11 The petitioners will not be entitled to get any loan, advance or withdrawal or can create any in encumbrances on the aforesaid fixed deposit receipt without prior permission of this Tribunal. However periodical interest accrued from time to time on the fixed deposits be paid to claimant.

12 The copy of judgment be kept in other M.A.C.P Nos. 68/2022.

13 Award be drawn accordingly in the above petition.

Order signed and pronounced in the open Court today.

Date : 06-06-2026.

Nadiad.

(Prakashkumar P. Purohit)
2nd Additional District Judge,
M.A.C.T.(AUX)
Kheda at Nadiad
GJ00685.

MGM-II