



Exh. 134
Received on 20/09/2021
Registered on 20/09/2021
Decided on 22/04/2026
Duration Y M Days
04 07 05

BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL
(AUX.) & 6TH ADDITIONAL DISTRICT JUDGE,
KACHCHH – BHUJ.

(1) M.A.C.P. No.395/2021(Main)

(2) M.A.C.P. No.396/2021

(3) M.A.C.P. No.510/2021

(4) M.A.C.P. No.511/2021

(5) M.A.C.P. No.512/2021

(1) M.A.C.P. No. 395/2021 (Main)

LEGAL HEIR OF ASHISH ANILKUMAR RASTOGI

- 1. ANUMITA W/O. ASHISH RASTOGI,
Wife, Aged: 30 years, Occu. Household,**
- 2. DIVITA D/O. ASHISH RASTOGI,
Daughter, Aged: 04 years, Occu. Study,**
- 3. GARVITA D/O. ASHISH RASTOGI,
Daughter, Aged: 03 years, Occu. NIL**

(Applicant No. 2 & 3 are minor through their guardian i.e. applicant No. 1)

All Ori.R/o. E-91, Avantika Colony,
Nr. Water Tank MDA, Muradabad,
U.P.

At present R/o. 22095, Towar No. 5
Mahagun, Mayawoods,
Noida Extension, Noida

....Applicants

**Claim u/s.166 of the M.V. Act for getting
compensation of Rs.1,33,00,000/-....**

(2) M.A.C.P. No.396/2021

**LEGAL HEIR OF NITABEN SUSHILKUMAR
SHARMA,**

1. **SUSHILKUMAR S/O. SITARAM SHARMA,
Husband, Aged: 63 years, Occu. Retired,**
2. **ABHISHEK S/O. SUSHILKUMAR SHARMA,
Son, Aged: 35 years, Occu. Pvt. Service,**

All Ori.R/o. E-91, Avantika Colony,
Nr. Water Tank MDA, Muradabad,
U.P.

At present R/o. 22095, Towar No. 5
Mahagun, Mayawoods,
Noida Extension, Noida

....Applicants

**Claim u/s.166 of the M.V. Act for getting
compensation of Rs.15,00,000/-**

(3) M.A.C.P. No.510/2021

1. **SHREYANSH S/O. PUNIT KAUSHIK (SHARMA)
Aged: 09, Occu. Study,
Being minor through his guardian
PUNIT S/O. VINODKUMAR KAUSHIK(SHARMA)
Father, Aged: 48, Occu. Service,
R/o. 451, Arjun Marg, B-14,
Nae Basti, Bijnor, U.P.**

....Applicant

**Claim u/s.166 of the M.V. Act for getting
compensation of Rs.16,00,000/-**

(4) M.A.C.P. No.511/2021

1. **VARNIKA D/O. PUNIT KAUSHIK(SHARMA)**
 Aged: 15 19 Occu. Study,
 R/o. 451, Arjun Marg, B-14,
 Nae Basti, Bijnor, U.P. **....Applicant**

(Amendment carried out as per order passed below Exh. 37)

**Claim u/s.166 of the M.V. Act for getting
 compensation of Rs.13,00,000/-**

(5) M.A.C.P. No. 512/2021

**LEGAL HEIRS OF DIPTI W/O. PUNIT KAUSHIK
 (SHARMA)**

1. **VINODKUMAR S/O. CHANDRABHAN
 KAUSHIK(SHARMA)**
Father in law, Aged: 78 years, Occu. Retired,
2. **SHANTI W/O VINODKUMAR KAUSHIK
 SHARMA,**
Mother in law, Aged: 74 years, Occu. Household,
3. **PUNIT S/O. VINODKUMAR KAUSHIK
 SHARMA,**
Husband, Aged: 48 years, Occu. Service,
4. **VARNIKA D/O. PUNIT KAUSHIK
 (SHARMA)**
 Aged: 15 19 Occu. Study,
 R/o. 451, Arjun Marg, B-14,
 Nae Basti, Bijnor, U.P.
5. **SHREYANSH S/O. PUNIT KAUSHIK (SHARMA)**
 Aged: 09, Occu. Study,
 Being minor through his guardian
PUNIT S/O. VINODKUMAR KAUSHIK(SHARMA)
 Father, Aged: 48, Occu. Service,
 All R/o. 451, Arjun Marg, B-14,
 Nae Basti, Bijnor, U.P. **....Applicants**
(Being minor through Appl. No. 3)

**Claim u/s.166 of the M.V. Act for getting
compensation of Rs.61,00,000/-....**

Vs.

**PARTIES OF TRUCK-TRAILER NO.
GJ-12-BY-5436**

- 1. RAJUSINGH NATHUSINGH BHATTI,**
Aged: 39, Occu. Driving,
Residing at : Kidana Society,
Gandhidham-Kachchh
 - 2. DANGAR ROADWAYS,**
Office F-1, Deepak Chambers,
Madhapar Highway,
Bhuj-Kachchh
 - 3. CHOLAMANDALAM M.S.GENERAL
INS.CO. LTD,**
Office Shop No. 3,
Krishna Chambers,
“A” Wing, Station Road,
Bhuj-Kachchh
 - 3. IFFCO TOKIYO GENERAL INS. CO.LTD,
(INS. CO. OF BALENO CAR)**
Office No. 2A
“C” Wing, First Floor,
Katira Complex,
RTO Relocation Site,
Opp. VBC, Bhuj
-Opponents**

APPEARANCE :

1. L.A. **Mr. M.A.Saiyad and Mr. F.J.Saiyad** for claimants in claim petitions.
2. Served but remained absent for opponents No.1 & 2 in claim petitions.
3. L.A. **Mr. A.A.Sahedani** for opponent No. 3 in claim petitions.
4. L.A. **Mr. G.R.Prajapati** for opponent No. 4 in claim petitions.

-: COMMON JUDGMENT :-

1. These claim petitions are filed by the claimants under Section 166 of the Motor Vehicles Act, 1988 ('the M V Act') arising out of a vehicular accident dated 04.04.2021, along with the costs and interest at the rate of 18% per annum from the date of petition till realization, against the opponents.

1.2 It is pertinent to note that these claim petitions have arisen out of the same accident, hence, 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**, all the claim petitions arising out of the same accident is ordered to be decided by this common judgment and Ld. Tribunal has passed order to proceed the all matter in consolidated.

2. *Brief facts of the present claim petitions are that,* deceased **ASHISH ANILKUMAR RATOGI** was traveling from Naliya to Bhuj with his relatives in his Baleno Car bearing Registration No.GJ-12-EE-6795. The deceased was driving the car at a normal speed, following traffic rules, on the left hand side of the road. When they reached at the place of accident, the deceased was overtaking the vehicle ahead of his Car according to traffic rules. At that time, opponent No. 1 was driving his Truck-Trailer bearing Registration No.GJ-12-BY-5436 at high speed, recklessly and negligently, violating traffic rules, coming from the opposite side. At that point of time, the deceased gave a dipper signal to opponent No. 1 to indicate he was overtaking, but opponent No. 1 did not slow down his Truck-Trailer. Since

there was a vehicle on the left hand side that the deceased was overtaking, he could not pull the Car to the left. To avoid the accident, the deceased stopped his Car on the extreme right side of the road. At that time, the opponent No. 1 suddenly applied brakes, causing tires to skid, digging up the road. The Truck slipped and dragged for about 50 feet towards right side of the road. The cabin part went off the road into a ditch, while the rear chassis part collided with the car driven by the deceased. In this accident, the deceased and other passengers in the car sustained serious injuries and all three passed away and other sustained injuries. The accident occurred due to negligent driving of opponent No. 1.

2.2 Though service of notices, the opponent No. 1 & 2 did not appear nor filed written statement in claim petitions.

2.3 The opponent No. 3 – Insurance Company, appeared through Ld. Advocate Mr. Sahedani and filed written statements interalia denied the fact of the accident. It is submitted that, driver of Truck bearing Registration No.GJ-12-BY-5436 was not holding valid and effective driving licence. It is further denied the age, income and profession of the deceased as well as the claimants. It is submitted that, driver of the Baleno car was self negligent for an accident and therefore, Insurance Company is not liable to pay compensation. It is therefore prayed to exonerate the Insurance Company.

2.4 The opponent No. 4- Insurance Company, appeared through Ld. Advocate Mr. G.R.Prajapati and filed a written statements interalia denied the fact of the accident. It is submitted

that, driver of the Baleno Car was not holding valid and effective driving licence at the time of an accident. It is further denied the age, income and profession of the deceased as well as the claimants. It is submitted that, deceased was owner cum driver of the Motor car and was not being third party and therefore, cannot claim compensation against his own Insurance Company. It is submitted that, accident took place due to sole negligence on the part of the driver of the Trailer. It is therefore prayed to exonerate the Insurance Company.

3. In view of the pleadings of the parties, the following common issues were framed.

- [1] Whether petitioners prove that alleged death or injuries due to the use of the Motor vehicle ?
- [2] Whether petitioners prove that they are entitled for any compensation from the opponents ? If yes, what amount of compensation should be allowed ?
- [3] What Order ?

4. My findings to the above Issues are as under:-

- [1] In the affirmative.
- [2] As per the final order.
- [3] As per the final order.

:- REASONS :-

5. To prove the pleading of the claim petitions and disprove the contents of the claim petitions, the parties have produced the following oral and documentary evidence on record:

(1) MACP No.395/2021

Exh. No.	Particulars
	<u>Oral Evidence</u>
42	Affidavit of examination in Chief of Anumita W/o. Ashish Rastogi
	<u>Documentary Evidence</u>
59	FIR
60	Panchanama of place of accident.
61	Inquest Panchanama
62	P.M. report
63	R.C.Book of Truck-Trailer
64	Insurance Policy of Truck-Trailer
65	R.C.Book of Baleno Car
66	Insurance Policy of Baleno Car
21/9	Pay Slip of Deceased for the month of Feb-2021
72	Driving Licence of deceased
100	Pay Slip for the Month of Oct. 2020
101	Pay Slip for the Month of Nov. 2020
102	Pay Slip for the Month of Dec 2020
103	Pay Slip for the Month of Jan. 2021
104	Pay Slip for the Month of Feb.2021
105	Closing pursis

(2) MACP No.396/2021

Exh. No.	Particulars
	<u>Oral Evidence</u>
56	Affidavit of examination in Chief of Abhishek S/o. Sushilkumar Sharma

	<u>Documentary Evidence</u>
67	Inquest Panchanama
68	P.M. report
87	Aadhar Card of deceased

(3) MACP No.510/2021

Exh. No.	Particulars
	<u>Oral Evidence</u>
48	Affidavit of examination in Chief of Punit S/o. Vinodkumar Kaushik (Sharma)
	<u>Documentary Evidence</u>
69	MLC Certificate
73	MLC Certificate
74	Discharge Summary
75	Disability Certificate
76	Aadhar Card of applicant
77	Medical Bills (Rs. 2,39,564)

(4) MACP No.511/2021

Exh. No.	Particulars
	<u>Oral Evidence</u>
43	Affidavit of examination in Chief of Varnika D/o. Punit Kaushik Sharma
	<u>Documentary Evidence</u>
70	MLC Certificate
78	MLC Certificate
79	Discharge Summary
80	Discharge Summary
81	Prescriptions
82	Disability Certificate

83	Aadhar Card of applicant
84	Medical Bills (Rs. 1,73,493/-)
85	Medical Bills (Rs.89,255/-)

(5) MACP No.512/2021

Exh. No.	Particulars
	<u>Oral Evidence</u>
49	Affidavit of examination in Chief of Punit S/o. Vinodkumar Kaushik (Sharma)
	<u>Documentary Evidence</u>
71	P.M. report
86	Deceased Aadhar Card
90	School Result
91 & 92	School Result

Ld. Advocate for the Insurance Company did not produce any oral as well as documentary evidence to prove their defence. They produced closing pursis in all claim petitions at Exh. 107.

ISSUE NO.1 & 2 COLLECTIVELY :

6. Heard Ld. Advocates for the parties and perused the record. Ld. Advocate for claimants has produced the written arguments at Exh. 111 and has relied upon the judgments which are duly considered by this Tribunal. Ld. Advocate for the opponent No. 3- Insurance Company has produced written arguments at Exh. 112 and Ld. Adv. for the opponent No. 4- Insurance Company has produced written arguments at Exh. 113

and they have raised the arguments mainly on the aspect of negligence which are duly considered by this Tribunal.

7. So far as the negligence is concerned, claimants have relied upon the FIR and Panchnama of the scene of accident. Upon perusal of the FIR (Exh. 59), it transpires that, the same was came to be lodged against Driver of Car, Aashish Anilkumar Rastogi. It also transpires that, driver of the Baleno Car was driving the said vehicle in full speed, negligent manner and took overtake without following the traffic rules and dashed with Truck came from the opposite side. The claimant has relied upon the panchanama of place of accident at Exh. 60 from which it transpires that, the road is wide 50 feet. It also transpires that, both vehicles were lying on the spot with damaged conditions. It also transpires that, application of brakes and skid of tires and digging up the road was found. The Truck slipped and dragged for about 50 feet towards right side of the road. The cabin part went off the road into a ditch, while the rear chassis part collided with the car driven by the deceased.

8. At this stage it is worthy to note that, while deciding the point of negligence, it has to be borne 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 **Bimla Devi v/s H.R.T.C., reported in AIR 2009 SC 2819** and **Parmeshwari Devi v/s Amir Chand, reported in 2011 (11) SCC 635.**

9. Considering the above evidences, more particularly FIR and panchanama of place of accident, though the FIR has been filed against the driver of the Car i.e. deceased, the driver of the Truck-Trailer was also negligent to some extent. The road where the accident was occurred is highway road from Naliya to Bhuj. It was 50 feet wide. The mark of application of brakes and skid of tires and digging up the road was found from the panchanama of place of offence. It also found that, The Truck-Trailer was slipped and dragged for about 50 feet towards the right side of the road and thus, it can safely be said that, the driver of the Truck has negligent to some extent. Herein the present case, the FIR has been filed against the driver of Car. The Truck is heavy vehicle as compared to the Car and therefore, the driver of the Truck ought to have been more caution while plying heavy vehicle on the road. The driver of the Truck could have avoid the accident. Hence, considering the peculiar facts and circumstances of the case, ***the driver of the Car was negligent to the extent of 70% in whose against the FIR is filed whereas the driver of the Truck has negligent to the extent of 30%.*** Hence, I answer the issue accordingly.

ISSUE NO.2 :

(1) M.A.C.P. No 395/2021

10. Ld. Advocate for the claimants submitted that, at the time of accident, the deceased, Aashish Anilkumar Rastogi was heal and healthy and was doing service in Naliya Air-force as Corporal and was receiving salary of Rs. 63,000/- per month. To prove the income of deceased, the claimant has produced the salary slips at Exh. 100 to 104 for the month from October 2020

to February, 2021. The accident took place on 04.04.2021. The claimant, wife of the deceased, Anumita Rastogi, has reiterated the said fact in her examination in chief. During the cross examination, she has admitted that, she had received all the benefits entitled after the death of her husband from the Air force. She has denied to create false document in respect of income of her husband. Upon perusal of the salary slip latest February, 2021 which is produced at Exh. 104, wherein the Gross salary is shown 62,991/- and net Rs. 51,036/- was receiving after requisite deduction. It also transpires that, the deceased was paid Income Tax at Rs. 3513/-. It is settled principle of law that, actual salary less Tax. Herein the present case, Rs. 3513/- is required to be deducted from the gross salary **Rs. 59478/-** (Rs. 62,991 - Rs. 3513/-as Tax) is actual net salary for determination of income of deceased. The pay slip is the statutory documents for considering the income of claimant/deceased. Hence, the income of deceased is to be considered **Rs. 59,478/- per month and annual income comes Rs. 7,13,736/-**.

11. So far as age of the deceased is concerned, the claimants have pleaded that age of the deceased was 33 years. To prove the age, the claimant has relied upon the Driving Licence which is produced at Exh. 72 wherein the Date of Birth is mentioned 07.05.1987 and accident took place on 04.04.2021. Therefore, it is clear that at the time of accident, the age of the deceased was 33 years. Hence, the deceased would fall under the age group 31 to 35 and, therefore, the claimants would be entitled to get compensation calculated on the basis of the multiplier of **16**.

12. As above discussed age of the deceased at the time of death was around 33 years and he was salaried person and receiving the salary from the Central Government and his job was permanent job. So as per the ratio laid down by the Larger Bench of the Hon'ble Supreme Court rendered in the case of **National Insurance Company vs. Pranay Sethi, 2017 (16) SCC 680**, income of the deceased shall be increased by **50%** i.e. **Rs.3,56,868/- [Rs. 7,13,736 x 50%]** Doing so, the amount would come to around **Rs.10,70,604/-**.

13. The deceased was married. Herein the present case, the applicant No. 1 is the wife whereas the applicant No. 2 and 3 are the daughter of the deceased and they were dependent upon the income of the deceased. Therefore, as per the law laid down by the Hon'ble Supreme Court in Pranay Sethi case, 1/3rd i.e. **Rs.3,56,868/- [Rs. 10,70,604 x 1/3rd]** is required to be deducted towards personal expenses of the deceased. Hence, the amount would come to around **Rs.7,13,736/-** Since the deceased was aged about 33 years, applying the multiplier of **16**, the amount would come to **Rs.1,14,19,776/-**.

14. As this Tribunal is deciding the claim petition in the year 2026, as held in para No.61(viii) of the Pranay Sethi's case 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. 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, I 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 Hon'ble Supreme Court in Pranay Sethi's case, petitioners are entitled for **Rs.18,000/-** towards loss to estate and **Rs.18,000/-** towards funeral expenses.

15. So far as grant of consortium to the applicants is concerned, the Hon'ble Apex Court in the latest judgment in case of **Magma General Insurance Com. Ltd. V/s. Nanu Ram @ Churhu Ram, 2018 (18) SCC 130** and **United India Insurance Co. Ltd. V. Satinder Kaur @ Satwinder Kaur, 2020 SCC Online 410 (SC) (FB)** and **N.I.A Com. V/s. Smt. Somwati, 2020 (9) SCC 644** has categorically held that in addition to spouse, the children are entitled for parental consortium in case of death of a parent and Filial consortium is the right of the parents to compensation in case of death of a child and the amount to be awarded for loss of consortium will be as per the amount fixed in Pranay Sethi's case. Furthermore, the Hon'ble Apex Court has categorically given direction to the Tribunals and High Courts to award compensation for loss of consortium as a legitimate conventional head. Hence, in above view of facts and circumstances, this Tribunal is duty bound to follow the directions issued by the Hon'ble Apex Court in the above judgment.

16. Hence, in this case, the applicant No. 1 who is the wife of the deceased and applicant No. 2 & 3 are the daughters of the deceased, they are entitled to get **Rs. 48,000/- each**. Hence, the applicants are entitled to the total amount of compensation as under :

PARTICULARS	AMOUNT
FUTURE LOSS OF DEPENDENCY	RS.1,14,19,776/-
LOSS TO ESTATE	RS.0,00,18,000/-
FUNERAL EXPENSES	RS.0,00,18,000/-
CONSORTIUM	RS.0,01,44,000/-
TOTAL AMOUNT OF COMPENSATION	RS.1,15,99,776/-
Rounded off Rs.	Rs. 1,15,99,800/-

17. Since, as held in above, the driver of the Baleno Car was negligent to the extent of 70%, Rs.81,19,860/- (Rs.1,15,99,800/- x 70%) is required to be deducted from the awarding amount and it comes **Rs. 34,79,940/-** is final awarding amount and the claimants are entitled to get Rs. 34,79,940/-.

Herein the present case, the claimant- Anumita W/o. Ashish Rastoi has admitted in cross examination that, she has received compensation of PA coverage and therefore, Rs. 15,00,000/- towards P.A. to owner/driver is not given to claimant. Though the Insurance Policy is “Bundle Policy” and Insured had paid the additional premium but the deceased was not the “Paid Driver”, he driven his own vehicle and therefore, he cannot be termed as “Third Party”. Hence, herein the present case, the opponent Nos. 1 to 3 are jointly and severally liable to pay compensation, the opponent No. 4 is exonerated.

ISSUE NO.2 in MACP No. 396/2021:

18 It is pleaded by the claimant that, deceased was earning Rs. 20,000/- per month from pottery work and household work. However, to prove actual income from said work, the claimant has failed to produced any documentary evidence nor examined any witness. The said fact has been admitted by the claimant in his cross examination (Exh. 56) taken by the Id.

Advocate for the Insurance Company. He has admitted that, her mother was housewife. He is doing private job and his father is retired person and receiving the pension from the Government. He has admitted that, neither the claimant, Abhishek nor his father i.e. claimant No. 1 was depend upon the income of the deceased. Ld. Advocate for the Insurance Company has argued that, the claimants were having separate income and therefore, they cannot be termed as dependents upon the income of their mother/deceased and therefore, the claimants are not entitled to get future loss of dependency.

19. At this stage, it would be meaningful to discuss the ratio laid down by Hon'ble Gujarat High Court, rendered in the case of **United India Insurance Co. Ltd. Vs. Diptiben Ureshbhai Vora and Ors** in, rendered in **First Appeal No. 2188 to 2915 of 2002**. The relevant paragraphs of the aforesaid decision is as under -

[“10. Thus, considering the object and purpose of awarding compensation under the head of loss of dependency / future loss of income though at the instance of claimant, who is the legal representative but not dependent upon the deceased/ victim of the accident, claim petition for seeking compensation under the Motor Vehicle Act shall be maintainable, but such claimant, who is not dependent upon the deceased/ victim of the accident, shall not be entitled to any compensation under the head of loss of dependency/ future loss of income, for the simple reason that at the time of accident, such a claimant was not dependent upon the income of the deceased / victim of the accident and therefore, there shall not be any loss of dependency / future loss of income to such a claimant. However, such claimant shall be

entitled to compensation under other heads such as medical expenses, funeral expenses, transportation charges etc., which may fall under pecuniary loss/ pecuniary damages, as the same can be said to be loss to the estate and the claimant shall also be entitled to compensation under other conventional heads such as loss of consortium, loss of love and affection, loss of estate etc. Under the circumstances, it is held that the claim petition seeking compensation under the Motor Vehicles Act for the death of the deceased/ victim of the accident, at the instance of a claimant, who is heir and legal representative but not dependent, shall be maintainable and as observed by the Hon'ble Supreme Court in the case of Majula Devi (Supra), such compensation shall not be less than the amount as provided under Section 140 of the Motor Vehicles Act. Thus, the claimant in such a case, shall be entitled to minimum compensation as provided under Section 140 of the Motor Vehicles Act. It is further observed and held that as such claim petition is held to be maintainable, such a claimant, who is legal heir but not a dependent, shall not be entitled to any amount of committed under the head of loss of dependency/ future loss of income, but shall be entitled to compensation under other heads towards pecuniary loss/damages such as medical expenses, transportation, special diets, attendances charges and under the conventional heads such as, loss of consortium, loss of estate, loss of love and affection etc.”]

19.1 In light of the law discussed above and the facts of the present case, it is apparently clear that, the claimants were earning separately at the time of the accident. They were not in any manner dependent on income of deceased however, they are legal representatives to file the claim petition in respect of death

of deceased but they were not called as dependents. Thus, applying the ratio discussed above, the compensation under the head of loss of dependency cannot be awarded to the applicants. However, the applicants are entitled to get compensation under other heads, but the compensation under other heads should not be less than the amount of interim compensation as provided under Section 140 of the M.V Act as held in the aforesaid decision.

20. However, it is required to be noted that, the applicants not filed application under Section 140 of M.V.Act. However, the claimants are entitled to get compensation under other heads. As this Tribunal is deciding the claim petition in the year 2026, as held in para No.61(viii) of the Pranay Sethi's case, petitioners are entitled for **Rs.18,000/-** towards loss to estate and **Rs.18,000/-** towards funeral expenses. So far as grant of consortium to the applicants is concerned, as per the judgment of Hon'ble Apex Court **Magma General Insurance Com. Ltd. V/s. Nanu Ram @ Churhu Ram, 2018 (18) SCC 130 and United India Insurance Co. Ltd. V. Satinder Kaur @ Satwinder Kaur, 2020 SCC Online 410 (SC) (FB) and N.I.A Com. V/s. Smt. Somwati, 2020 (9) SCC 644**, the applicant No. 1 who is husband and applicant No. 2 who is son of the deceased are entitled to get consortium Rs. 48,000/- each. Hence, the applicants are entitled to the total amount of compensation as under :

PATICULARS	AMOUNT
FUTURE LOSS OF DEPENDENCY	NIL
LOSS TO ESTATE	RS.00,18,000/-

FUNERAL EXPENSES	RS.00,18,000/-
CONSORTIUM	RS.00,96,000/-
TOTAL AMOUNT OF COMPENSATION	RS.1,32,000/-

ISSUE NO.2 IN MACP 510/2021:

21. The claimant has pleaded (Exh.48) that at the time of the accident, the original claimant was 9 years old and thus, he was minor at the time of the accident. To ascertain the income of minor, I have gone through the latest judgment delivered by the Hon'ble Apex Court in **Hitesh Nagjibhai Patel Vs. Bababhai Nagjibhai Rabari and Anr in Civil Appeal No. 10278/2025**, judgment **Dtd. 08.08.2025** wherein the it is held that, the computation of compensation under the head of loss of income ought to be made by adopting, at a very least, the minimum wages payable to a skilled workman as notified for the relevant period in the respective State where the cause of action arises. Herein the present case, in view of the above ratio, this Tribunal can go into the prevailing minimum wages, which for the skilled once, as in the year of accident i.e. 04.04.2021, in Gujarat would be Rs. 356.2p pay day, therefore, in the interest of justice, this Tribunal deem it appropriate determine the income of the claimant at Rs. 9261.2p per month, rounding off Rs. 9261/- per month and **Rs.1,11,132/-** per annum.

22. So far as the age of the claimant is concerned, in the affidavit for examination in chief the claimant has stated that at the time of the accident, original claimant was 9 years old. The claimant has produced the MLC Certificate at Exh. 70 wherein the age of the original claimant/ injured is show 10 years. In view of the judgment rendered by the Hon'ble Apex Court in

Devendrakumar Tripathi Vs. The oriental India Ins. Co. Ltd in reported in 2025 INSC 1429, the multiplier of the claimant is taken 15. Hence, claimant would be entitled to get compensation calculated on the basis of the multiplier of 15.

23. So far the income of future prospect in injury case is concerned, in the case of **Pappu Deo Yadav Vs. Naresh Kumar, AIR 2020 SC 4424** the Hon'ble Apex Court has held in Para 7 as under ;

" 7 : Two questions arise for consideration; one, whether in case of permanent disablement incurred as a result of a Motor accident, the claimant can seek, apart from compensation for future loss of income, amount for future prospects too; and two, the extent of disability. On the first question, the High Court no doubt, is technically correct in holding that Pranay Sethi involved assessment of compensation in a case where the victim died. However, it went wrong in saying that later, the three-judge bench decision in Jagdish was not binding, but rather that the subsequent decision in Anant to the extent that it did not award compensation for future prospects, was binding. This Court is of the opinion that there was no justification for the High Court to have read the previous rulings of this Court, to exclude the possibility of compensation for future prospects in accident cases involving serious injuries resulting in permanent disablement. Such a narrow reading of Pranay Sethi is illogical, because it denied altogether the possibility of the living victim progressing further in life in accident cases- and admits such possibility of future prospects, in case of the victim's death. "

23.1 This Tribunal also places reliance on the judgment of the Hon'ble Supreme Court in the case of **Erudhaya Priya V. State Express Transport Corporation Ltd., AIR 2020 4284** wherein the victim aged about 23 who had sustained 31.1% permanent disability, the Hon'ble Apex Court granted 50% rise in the income of the claimant.

24. On perusal of the above referred ratios of the Hon'ble Apex Court which are based on the ratio laid down by

the Larger Bench of the Hon'ble Supreme Court rendered in the case of **National Insurance Company vs. Pranay Sethi, 2017 (16) SCC 680**, it becomes clear that even in the injury case which has resulted into permanent partial disablement, the future prospect can be taken into consideration. Herein the present case, it is the case of the claimant that, at the time of accident, he was pursuing his study and his future will be bright. Further, considering the age of the claimant at the time of accident, this is a fit case to give rise of **40% i.e. Rs.44,452/- (Rs.1,11,132/- X 40%)** in the actual income of the claimant. On doing so, the annual income of the claimant can be worked out as **Rs.1,55,584/-**.

25. As far as the disability sustained by the claimant is concerned, the claimant has relied upon the medical papers and other documentary evidence of his treatment taken in the hospital, the disability certificate [Exh. 75] wherein the Doctor has certified that, claimant is having permanent physical disability of 38 of right lower limb and 34% of left lower limb. Both the parties are agreed to consider **22%** disability body as whole. Hence, considering the peculiar facts, **this Tribunal deems fit to consider 22% disability body as whole.**

26. Considering the above facts that the above disablement did not result into any functional disability and even it is not stated so in the disability certificate, I do not find it fit to hold that because of the vehicular injuries, claimant has suffered any functional disability. Taking into account the physical disability of the claimant which is assessed as **22%** body as a

whole, his yearly loss of income would come to **Rs.34,228/- p.a. (Rs.1,55,584/- X 22%)**. As noted hereinabove, considering the age of the claimant (9 years), the multiplier of **15** would be applicable, hence, the future economic loss of income would come to around **Rs.5,13,420/- p.a.**

27. So far as medical expenses is concerned, the claimant has produced the statement of medical bills at Exh. 77. The amount was shown Rs. 2,39,564/-. The said medical bills are supported by the original bills and same are not under challenged by the Insurance Company. Hence, considering the medical bills, claimant is entitled to get Rs. 2,39,564/- towards medical expenditure. Due to the accident, claimant has suffered injuries like shaft femur right side, shaft femur left side and Head Injury and he was treated as an indoor patient from 04.04.2021 to 05.04.2021 at Bhuj and from 05.04.2021 to 10.04.2021 at Sterling Hospital, Ahmedabad and thereafter, he had taken post treatment also, **Rs.20,000/-** is allowed for pain, shock and sufferings and **Rs.20,000/-** for attendant charges, transportation and rich diet. Last but not the least, the claimant is also entitled for 01 month's actual loss of income, as he was admitted in the hospital and was advised to take bed rest for quite some time, which comes to **Rs. 9,200/-**. The claimant is entitled to get the aforesaid amount of compensation, which can be reclassified as under.

Description	Amount
Future loss of income.	Rs.5,13,420=00
Pain, shock and sufferings,	Rs.0,20,000=00
Attendant Charges, Transportation, Rich	Rs.0,20,000=00

diet	
Actual loss of income	Rs.0,09,200=00
Medical expenses	Rs.2,39,564=00
TOTAL AMOUNT OF COMPENSATION ROUNDED OFF	Rs.8,02,184=00 Rs.8,02,200=00

ISSUE NO.2 IN MACP 511/2021:

28. The claimant has pleaded (Exh.43) that at the time of the accident, the original claimant was 15 years old and thus, She was minor at the time of the accident. To ascertain the income of minor, as per the judgment of the Hon'ble Apex Court in **Hitesh Nagjibhai Patel Vs. Bababhai Nagjibhai Rabari and Anr in Civil Appeal No. 10278/2025**, judgment **Dtd. 08.08.2025**, Tribunal can go into the prevailing minimum wages, which for the skilled once, as in the year of accident i.e. 04.04.2021, in Gujarat would be Rs. 356.2p pay day, therefore, in the interest of justice, this Tribunal deem it appropriate determine the income of the claimant at Rs. 9261.2p per month, rounding off Rs. 9261/- per month and **Rs.1,11,132/-** per annum.

29. So far as the age of the claimant is concerned, in the affidavit for examination in chief the claimant has stated that at the time of the accident, original claimant was 15 years old. The claimant has produced the MLC Certificate at Exh. 78 wherein the age of the original claimant/ injured is show 15 years. In view of the judgment rendered by the Hon'ble Apex Court in **Devendrakumar Tripathi Vs. The oriental India Ins. Co. Ltd in reported in 2025 INSC 1429**, the multiplier of the claimant

is taken 15. Hence, claimant would be entitled to get compensation calculated on the basis of the multiplier of **15**.

30. So far the income of future prospect in injury case is concerned, in view of the ratio laid down in **Pappu Deo Yadav Vs. Naresh Kumar, AIR 2020 SC 4424 (Supra)**, the Hon'ble Supreme Court in the case of **Erudhaya Priya V. State Express Transport Corporation Ltd., AIR 2020 4284(Supra)** wherein the victim granted 50% rise in the income of the claimant.

31. On perusal of the above referred ratios of the Hon'ble Apex Court which are based on the ratio laid down by the Larger Bench of the Hon'ble Supreme Court rendered in the case of **National Insurance Company vs. Pranay Sethi, 2017 (16) SCC 680**, it becomes clear that even in the injury case which has resulted into permanent partial disablement, the future prospect can be taken into consideration. Herein the present case, it is the case of the claimant that, at the time of accident, she was pursuing her study and her future will be bright. Further, considering the age of the claimant at the time of accident, this is a fit case to give rise of **40% i.e. Rs.44,452/- (Rs.1,11,132/- X 40%)** in the actual income of the claimant. On doing so, the annual income of the claimant can be worked out as **Rs.1,55,584/-**.

32. As far as the disability sustained by the claimant is concerned, the claimant has relied upon the medical papers and other documentary evidence of his treatment taken in the hospital, the disability certificate [Exh. 82] wherein the Doctor has certified that, claimant is having permanent physical

disability of 36% of right lower limb and 6% of Nasal bone and disfigurement of face. Both the parties are agreed to consider **15%** disability body as whole. Hence, considering the peculiar facts, **this Tribunal deems fit to consider 15% disability body as whole.**

33. Considering the above facts that the above disablement did not result into any functional disability and even it is not stated so in the disability certificate, I do not find it fit to hold that because of the vehicular injuries, claimant has suffered any functional disability. Taking into account the physical disability of the claimant which is assessed as **15%** body as a whole, his yearly loss of income would come to **Rs.23,338/- p.a. (Rs.1,55,584/- X 15%)**. As noted hereinabove, considering the age of the claimant (15 years), the multiplier of **15** would be applicable, hence, the future Economic loss of income would come to around **Rs.3,50,070/- p.a.**

34. So far as medical expenses is concerned, the claimant has produced the statement of medical bills at Exh. 84 & 85. The amount was shown Rs. 1,73,493/- and Rs. 89,255/- i.e. total Rs.2,62,748/- . The said medical bills are supported by the original bills and same are not under challenged by the Insurance Company. Hence, considering the medical bills, claimant is entitled to get Rs. 2,62,748/- towards medical expenditure. Due to the accident, claimant has suffered injures like shaft femur right side, Head injury with multiple abrasions and Nasal bones bilateral minimally displaced and she was treated as an indoor patient from 04.04.2021 to 05.04.2021 at Bhuj and from

05.04.2021 to 10.04.2021 at Sterling Hospital, Ahmedabad and thereafter, she had taken post treatment also, **Rs.20,000/-** is allowed for pain, shock and sufferings and **Rs.20,000/-** for attendant charges, transportation and rich diet. Last but not the least, the claimant is also entitled for 01 month's actual loss of income, as she was admitted in the hospital and was advised to take bed rest for quite some time, which comes to **Rs. 9,200/-**. The claimant is entitled to get the aforesaid amount of compensation, which can be reclassified as under.

Description	Amount
Future loss of income.	Rs.3,50,070,=00
Pain, shock and sufferings,	Rs.0,20,000=00
Attendant Charges, Transportation, Rich diet	Rs.0,20,000=00
Actual loss of income	Rs.0,09,200=00
Medical expenses	Rs.2,62,748=00
TOTAL AMOUNT OF COMPENSATION	Rs.6,62,018=00
ROUNDED OFF	Rs.6,62,100=00

ISSUE NO.2 M.A.C.P. No 512/2022

35. Ld. Advocate for the claimants submitted that, at the time of accident, the deceased, Dipti W/o. Punit Kaushik (Sharma) was heal and healthy and was given tuition for students of Std 8 to 10 and thereby earning Rs. 22,000/- and was doing household work and earning Rs. 15,000/- per month. Thus, the deceased was receiving total income of Rs. 35,000/- per month. However, to prove profession of the deceased, the claimants have

failed to produce any document. The claimant has admitted in cross examination that, he has failed to produced the income of deceased by cogent documentary evidence. Hence, in absence of any cogent documentary evidence in respect of income of deceased, this Tribunal has gone the rate of minimum wage. Herein the present case, the accident occurred on 04.04.2021 and the deceased was skilled worker and thus, his monthly income would be calculated at Rs. 9200/- and annual income comes **Rs. 1,10,400/-**

36. So far as age of the deceased is concerned, the claimants have pleaded that age of the deceased was 44 years. To prove the age, the claimant has relied upon the P.M. report of deceased which is produced at Exh. 71 wherein the age of the deceased is mentioned 45 years. Therefore, it is clear that at the time of accident, the age of the deceased was 45 years. Hence, the deceased would fall under the age group 41 to 45 and, therefore, the claimants would be entitled to get compensation calculated on the basis of the multiplier of **14**.

37. As above discussed age of the deceased at the time of death was around 45 years and she was not salaried person. So as per the ratio laid down by the Larger Bench of the Hon'ble Supreme Court rendered in the case of **National Insurance Company vs. Pranay Sethi, 2017 (16) SCC 680**, income of the deceased shall be increased by **25%** i.e. **Rs.27,600/-**. [**Rs. 1,10,400 x 25%**] Doing so, the amount would come to around **Rs.1,38,000/-**.

38. The deceased was married and she left five dependents who depends upon the income of deceased. Therefore, as per the law laid down by the Hon'ble Supreme Court in Pranay Sethi case, 1/4th i.e. **Rs.34,500/- [Rs. 1,38,000 x 1/4th]** is required to be deducted towards personal expenses of the deceased. Hence, the amount would come to around **Rs.1,03,500/-** Since the deceased was aged about 45 years, applying the multiplier of **14**, the amount would come to **Rs.14,49,000/-**.

39. As this Tribunal is deciding the claim petition in the year 2026, as held in para No.61(viii) of the Pranay Sethi's case 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. The aforesaid amounts should be enhanced at the rate of 10% in every three years. As six years have been passed form the date of the pronouncement of the pranay Sethi's case, I 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 Hon'ble Supreme Court in Pranay Sethi's case, petitioners are entitled for **Rs.18,000/-** towards loss to estate and **Rs.18,000/-** towards funeral expenses.

40. So far as grant of consortium to the applicants is concerned, the Hon'ble Apex Court in the latest judgment in case of **Magma General Insurance Com. Ltd. V/s. Nanu Ram @ Churhu Ram, 2018 (18) SCC 130 and United India Insurance Co. Ltd. V. Satinder Kaur @ Satwinder Kaur, 2020 SCC Online 410 (SC) (FB) and N.I.A Com. V/s. Smt. Somwati,**

2020 (9) SCC 644, the claimants are entitled to get consortium. Herein the present case, the applicant No. 1 and 2 are the father in law and mother in law of deceased, they are not entitled to get consortium. The applicant No. 3 is husband, applicant No. 4 and 5 are daughter and son of the deceased, they are entitled to get Rs. 48,000/- each under the consortium. Hence, the applicants are entitled to the total amount of compensation as under :

PARTICULARS	AMOUNT
FUTURE LOSS OF DEPENDENCY	RS.14,49,000/-
LOSS TO ESTATE	RS.00,18,000/-
FUNERAL EXPENSES	RS.00,18,000/-
CONSORTIUM	RS.01,44,000/-
TOTAL AMOUNT OF COMPENSATION	RS.16,29,000/-

LIABILITY :

41. As held hereinabove the accident took place due to rash and negligent driving on part of driver of Baleno Car bearing Registration No.GJ-12-EE-6795 has negligent to the extent of 70% whereas the driver of the Truck-Trailer No.GJ-12-BY-5436 has negligent to the extent of 30%. Herein the present claim petition, the opponent No. 1 is the driver, opponent No. 2 is the owner and opponent No. 3 is the Insurance Company of Truck-Trailer No.GJ-12-BY-5436 whereas the opponent No. 4 is the Insurance Company of Balono Car.

41.1 The claimant has produced the copy of the Insurance Policy of Truck -Trailer at Exh. 64 from which it transpires that, the Insurance Policy of Truck was valid and effective on the day of the accident. It was the policy of “ *Package - Goods Carrying*

Vehicle". Further, the claimant has produced the Insurance Policy of Car at Exh. 66 from which it transpires that, the Insurance Policy was valid and effective at the time of the accident. It was “ ***Bundle Motor Policy- 3Yr TP+ 1 Yr OD (Private Vehicle)***”. It also transpires that, the Own Damage policy was valid from 20.01.2021 to 19.01.2022 whereas the Third Party was valid from 20.01.2021 to 19.01.2024. The accident took place on 04.04.2021. The copy of R.C.Book of Car is produced at Exh. 65 from which it appears that it was registered on 22.01.2021 hence, it can be said that, accident took place within one year from the date of purchase of car. Hence, the opponent No. 1 to 4 are jointly and severally liable to pay compensation to the claimants **except the claimant of MACP No. 395/2021.**

42. So far as other defence is concerned, the Insurance company did not produced any oral as well as documentary evidence to prove their defence.

INTEREST :

43. The claimants have prayed for interest at the rate of 18% per annum. Therefore, I have gone through the judgment delivered by the Hon'ble Apex Court in the case of Hanumantharaju B (Dead) By Lr Vs. M. Akram Pasha and Anr reported in 2025 INSC 682 wherein Tribunal had awarded 9% interest which was reduced by the Hon'ble High Court to 6% and the Hon'ble Supreme Court granted rate of 7% may be more appropriate to ensure fairness. Hence, considering the above judicial pronouncement, the claimant is entitled to get an interest

@ 7% p.a., from the date of filling of the present claim petition,
Hence, I pass following order.

:- ORDER :-

1. The claim petition No. **395/2021, 396/2021, 510/2021, 511/2021 and 512/2021** are “PARTLY ALLOWED” accordingly in the following terms.

<u>Claim Case Number</u>	<u>Amount</u>
(1) MACP NO.395/2021	Rs.34,79,940/-
(Rupees Thirty Four Lakh Seventy Nine Thousand Nine Hundred Forty Only)	
(2) MACP NO.396/2021	Rs.1,32,000/-
(Rupees One Lakh Thirty Two Thousand Only)	
(3) MACP NO.510/2021	Rs.8,02,200/-
(Rupees Eight Lakh Two Thousand Two Hundred Only)	
(4) MACP NO.511/2021	Rs.6,62,100/-
(Rupees Six Lakh Sixty Two Thousand One Hundred Only)	
(5) MACP NO.512/2021	Rs.16,29,000/-
(Rupees Sixteen Lakh Twenty Nine Thousand Only)	

2. In MACP No. 395/2021, the opponent No. 1 to 3 are jointly and severally liable and thus, opponent No. 4 is exonerated. Whereas in MACP No. 396/2021, 510/2021, 511/2021, 512/2021, all opponents i.e. Opp. No. 1 to 4 are held liable to pay the above amount of compensation to the applicants are jointly and severally and they are directed to deposit the said amount with 07% p.a. interest from the date of institution of claim petitions until the said amount is realized with proportionate costs within one month from the date of the order.

However, in MACP No. 396/2021, 510/2021, 511/2021 & 512/2021, the opponents No. 1 to 3 has negligent to the extent of 30% whereas the opponent No. 4 has negligent to the extent of 70%.

3. The aforesaid opponents are directed to deposit the awarded amount within one month from today in this Tribunal.

4. On such deposit being made, first of all deficit Court Fees and the amount of interim compensation paid to the claimants, if any, shall be deducted from the awarded amount.

Sr.No.	MACP	DISBURSEMENT
1	395/2021	1. Applicant No. 1 being Wife - 60% 2. Applicant No. 2 being daughter -20% 3. Applicant No. 3 being daughter- 20% (Minor)
2	396/2021	1. Applicant No. 1 being Husband - 60% 2. Applicant No. 2 being Son- 40%
3	510/2021	1. Applicant is minor- 100% (Through his guardian)
4	511/2021	1. Applicant.
5	512/2021	1. Applicant No. 1 being father in law - 10% 2. Applicant No. 2 being mother in law-10% 3. Applicant No. 3 being Husband - 40% 4. Applicant No. 4 being Daughter - 20% 5. Applicant No. 5 being Son- 20% (Minor) (Through his/her guardian)

5. Out of the deposited amounts, 60% shall be invested in Fixed Deposit Scheme in any Nationalized Bank in the name of major claimants for a period of Five years and remaining 40% amount be paid by way of Account Payee cheque to the said claimants. So far as minor claimants are concerned, their entire

amount shall be invested in FDR in any Nationalized Bank in the name of the minor claimants through his/her/their guardian for the period of Five Years or till he/she/they attains majority whichever is later.

5.1 The concerned Bank is directed not to grant any loan, advances or withdrawal against the said F.D.R. without obtaining prior permission of this Tribunal.

5.2 However, the claimants will be entitled to draw quarterly interest on the amount of deposits in the F.D.Rs.

6. In compliance with Circular No. 9182/2021, which was issued pursuant to the directions of the Hon'ble Supreme Court in Writ Petition (Civil) No. 534/2020 dated 16.11.2021, the opponent is required to deposit the amount as directed.

7. Award shall be drawn accordingly.

Original of this judgment shall be kept in MACP No.395/2021 and certified copy thereof shall be kept with MACP No.396/2021, 510/2021, 511/2021, 512/2021.

Signed and pronounced in the open Court today i.e. 22nd April, 2026 at Bhuj.

Dtd. 22/04/2026
Place: Bhuj

(Veerat Ashok Buddha)
6th Additional District Judge &
M.A.C. Tribunal (Auxi),
Bhuj-Kachchh
GJ-00702

/Rajesh Vaghela/