

(1)

MACP/26/2024
with MACP/27/2024

Received on : 16 / 03 / 2024

Registered on : 16 / 03 / 2024

Decided on : 29 / 06 / 2026

Duration : YY MM DD
02 03 13

Exh. : 100

**BEFORE THE HON'BLE MOTOR ACCIDENT
CLAIM TRIBUNAL (Main)
MAHISAGAR AT LUNAWADA.**

M.A.C.P. No. 26 of 2024

with

M.A.C.P. No. 27 of 2024

MACP No.26 of 2024

Claimant :

Malivad Rakeshkumar Bhembhai
Age – 26 years, Occupation – Service,
R/o. Malivad Faliyu, Mudavdekh,
Tal. Khanpur, Dist. Mahisagar.

V E R S U S

OPPONENTS :-

(Driver, owner and insurer of Bus no.GJ-18 G-8902)

1. DGP & IGP, Ahmedabad City (Owner)
Gujarat State Police Bhawan,
Sector 0, Gandhinagar.
2. Vanzara Mukeshkumar Rameshchandra (Driver)
R/o. Kevadiya, Po. Vadhelav,
Tal. Godhra, Dist. Panchmahals.

3. The New India Assurance Co. Ltd. (Insurer)
7/166, 15/17, Patel Brother Commercial Center,
Modasa Road, Lunawada, Dist. Mahisagar.

Appearance :-

Ld. Advocate Mr. J. M. Baria / Mr. P. J. Patel for claimant

Ld. AGP Mr. J. J. Solanki for opponent no.1

Ex-parte against the opponent no.2

Ld. Advocate Mr. K. G. Rathod for opponent no.3

MACP No.27 of 2024

Claimant :

Vanzara Mukeshkumar Rameshchandra
Age – 35 years, Occupation – Service,
R/o. Kevadiya, Po. Vadhelav,
Tal. Godhra, Dist. Panchmahals.

V E R S U S

OPPONENTS :-

(Owner and insurer of Bus no.GJ-18 G-8902)

1. DGP & IGP, Ahmedabad City (Owner)
Gujarat State Police Bhawan,
Sector 0, Gandhinagar.
2. The New India Assurance Co. Ltd. (Insurer)
7/166, 15/17, Patel Brother Commercial Center,
Modasa Road, Lunawada, Dist. Mahisagar.

Appearance :-

Ld. Advocate Mr. J. M. Baria / Mr. P. J. Patel for claimant

Ld. AGP Mr. J. J. Solanki for opponent no.1

Ld. Advocate Mr. K. G. Rathod for opponent no.2

CLAIM PETITIONS U/SEC.166 OF THE M. V. ACT**-: COMMON JUDGMENT :-**

- (1) Both these claim petitions preferred by the respective claimants against the opponents, under section 166 of the Motor Vehicles Act, 1988 (*referred to hereinafter as the 'MV Act'*) to get compensation along with interest, for sustaining injuries and having disability in a vehicular accident involving a Bus no.GJ-18 G-8902.
- (2) As both these claim petitions are arisen out of same accident, therefore my Ld. Predecessor has passed an order on 08.04.2024 to consolidate both the matters and to record evidences of both petitions in MACP No.26/2024.
- (3) The brief facts giving rise to the present claim petitions are that the claimants are employees of State Reserve Police Force (*SRPF in short*) and on 30.10.2023 the claimant of MACP No.27/2024 was driving the bus No.GJ-18 G-8902 (*hereinafter referred as 'the bus'*) and claimant of MACP No.26/2024 was sitting with other police persons in the said bus and while returning from firing practice. When they reached half km ahead of the Jambudi Firing Butt, Pavagadh on turning the driver of the bus i.e. claimant of MACP No.27/2024 tried to apply break of the said bus but it did not work so he shouted and informed the travelers about break failure and then the bus fell into ditch near the road and overturned. In this accident, total 38 persons sustained injuries including driver and informant. Therefore the

claimants filed claim petitions separately against the respective opponents and seeking compensation of Rs.25,00,000/-. The claimants sustained serious injuries and hospitalized as indoor patient for treatment. So, they occurred huge medical expenses and having permanent disability. The claimants stated that due to that he lost the promotion and thereby rise in his income. The opponent no.1 is owner of the bus, which was insured with the opponent / insurance company. That one of the traveler in the bus has declared this incident before the Halol Rural Police Station vide Entry no.29/2023.

- (4) The opponents of the respective claim petition were duly served with summons. That, in MACP No.26/2024, the opponent no.2 who is a driver of the bus and a claimant of MACP No.27/2024, was not appeared though served. The opponent no.1, in both claim petitions, appeared through the Ld. AGP and filed written statement vide Exh.16 and Exh.17 respectively wherein most of the facts of claim petition have been denied. He has further contended that the claimants have to prove occurrence of accident, involvement of alleged bus, ownership of opponent no.1 of the bus, injuries and disabilities and their income, amount of expenses, actual loss of income, etc. with documentary evidence. Also the facts regarding age, income, injuries and fact of the accident are denied and contended that all these facts are required to be proved by cogent evidence. Whereas opponent no.1 stated that the bus was insured with the New India Assurance Co. Ltd. at the time of the accident and

therefore, if the involvement of the bus is proved in this accident then said insurance company is liable to indemnify the insured.

(4.1) The insurance company appeared through the Ld. Advocate Mr. K. G. Rathod and filed reply vide Exh.36 and Exh.39 respectively *inter alia* denying facts of the claim petitions. The facts regarding age, income, injuries and fact of the accident are denied. He ha further contended that the insurer has collected premium for third party passenger like rioters, jail inmates, student / political demonstrators, general public breaching law and order etc. The coverage has not been taken for employees and therefore the insurance company is not liable to pay any compensation to the claimants. Further the opponent no.1 has not paid any additional premium to cover risk of legal liability for accident to non-fare paying passengers who are employees of the insure, hence the insurer is not liable to pay compensation to the claimants. Therefore requested to dismiss both the claim petitions with costs.

So far as the MACP No.27/2024 is concerned, the insurer has contended in their reply at Exh.39 that the looking to the relevant papers and documents, this is a case of self-negligence and as the claimant was driver of the bus so he is a tort-feasor and therefore he is not entitle to claim compensation for his own act of rashness, negligence or imprudence. Therefore, this petition may be dismissed against the insurance company.

- (5) From the pleadings of the parties, my Ld. Predecessor has framed following common issues vide Exh.18 for determination of the present claim petitions;
1. Whether it is proved that the claimant sustained injuries on account of rashness and negligence in driving on the part of the driver(s) of the vehicle(s) 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?
- (6) My findings for the aforesaid issues are as under:
1. In partly affirmative.
 2. As per final order.
 3. As per final order.
- (7) The parties of the present claim petition produced following oral as well as documentary evidences.

Oral Evidence of claimant

Deposition of Rakeshkumar Bhemabhai Malivad – claimant of MACP N.26/2024	Exh.25
Deposition of Mukeshkumar Rameshchandra Vanzara – claimant of MACP No.27/2024	Exh.26
Deposition of claimants' witness Premchandbhai Gavabhai Machhar (<i>employee of SRPF Group 4</i>)	Exh.80

Documentary Evidence of claimant

Copy of suchipatra	Exh.42
Copy of declaration of the accident	Exh.43

Copy of Station Diary (જાત્રીવાજોગી) Entry No.JJ/0029/2023	Exh.44
Copy of panchnama of place of accident	Exh.45
Copy of logbook of the bus No.GJ-18 G-8902	Exh.46
Copy of fitness certificate of the bus	Exh.47
Copy of RC Book of the bus	Exh.48
Copy of insurance policy of the bus	Exh.49
Copy of driving licence of driver of the bus (<i>claimant of MACP No.27/2024</i>)	Exh.50
Copy of eye examination / fitness certificate of the driver of the bus	Exh.51
Copy of order as to allotment of bus no.GJ-18 G-8902 to the SRPF, Dahod	Exh.52
Copy of MLC of Rakeshbhai Malivad, issued by CHC, Halol (<i>in MACP No.26/2024</i>)	Exh.53
Copy of Transfer Summary of Rakeshbhai Malivad, issued by Samanvay Hospital, Vadodara (<i>in MACP No.26/2024</i>)	Exh.54
Copy of MLC of Rakeshbhai Malivad, issued by Samanvay Hospital, Vadodara (<i>in MACP No.26/2024</i>)	Exh.55
Copy of Discharge Summary dated 26.11.2023 of Rakeshbhai Malivad, issued by Samanvay Hospital, Vadodara (<i>in MACP No.26/2024</i>)	Exh.56
Copy of Discharge Summary dated 17.01.2024 of Rakeshbhai Malivad, issued by Samanvay Hospital, Vadodara (<i>in MACP No.26/2024</i>)	Exh.57
Copy of MLC including reports and diagnosis of Rakeshbhai Malivad, issued by Samanvay Hospital, Vadodara (<i>in MACP No.26/2024</i>)	Exh.58
Medical bill of Rakeshbhai Malivad (<i>in MACP</i>)	Exh.59

No.26/2024)

Copy of letter for pay recovery of Rakeshbhai Malivad and challan of payment (<i>in MACP No.26/2024</i>)	Exh.60
Disability certificate of Rakeshbhai Malivad (<i>in MACP No.26/2024</i>)	Exh.61
Copy of screenshot as to credit of salary in Bank Account of Rakeshbhai Malivad (<i>in MACP No.26/2024</i>)	Exh.62
Copy of Aadhar Card of Rakeshbhai Malivad (<i>in MACP No.26/2024</i>)	Exh.63
Copy of PAN Card of Rakeshbhai Malivad (<i>in MACP No.26/2024</i>)	Exh.64
Copy of bank passbook of Rakeshbhai Malivad (<i>in MACP No.26/2024</i>)	Exh.65
Copies of MLC, treatment and examination papers, medical reports of Mukeshbhai Vanzara (<i>in MACP No.27/2024</i>)	Exh.66
Copy of discharge summary of Mukeshbhai Vanzara issued by Samanvay Hospital, Vadodara (<i>in MACP No.27/2024</i>)	Exh.67
Copy of MLC of Mukeshbhai Vanzara issued by CHC, Halol (<i>in MACP No.27/2024</i>)	Exh.68
Medical bills of Mukeshbhai Vanzara (<i>in MACP No.27/2024</i>)	Exh.69
Disability certificate of Mukeshbhai Vanzara (<i>in MACP No.27/2024</i>)	Exh.70
Copy of salary slip of Mukeshbhai Vanzara for the month of October 2023 (<i>in MACP No.27/2024</i>)	Exh.71
Copy of Aadhar Card of Mukeshbhai Vanzara (<i>in MACP No.27/2024</i>)	Exh.72
Copy of PAN Card of Mukeshbhai Vanzara (<i>in MACP No.27/2024</i>)	Exh.73

Copies of salary slips of Rakeshkumar Bhemabhai Malivad (<i>in MACP No.26/2024</i>)	Exh.81
Copy of letter sanctioning resignation of Rakeshkumar Malivad (<i>in MACP No.26/2024</i>)	Exh.82 & Exh.83
Copy of letter showing 125 days Leave Without Pay of Rakeshkumar Malivad (<i>in MACP No.26/2024</i>)	Exh.84
Copy of statement showing pay recovery of Rakeshkumar Malivad (<i>in MACP No.26/2024</i>)	Exh.85
Copy of challan for paying Pay Recovery by Rakeshkumar Malivad (<i>in MACP No.26/2024</i>)	Exh.86
Copy of muster roll for the month of 10/2023 and 11/2023 showing presence of Rakeshkumar Malivad on duty (<i>in MACP No.26/2024</i>)	Exh.87
Copies of salary slips of Mukeshkumar Vanzara (<i>in MACP No.27/2024</i>)	Exh.88
Copy of statement showing sanction of Earned Leave to Mukeshkumar Vanzara (<i>in MACP No.27/2024</i>)	Exh.89
Closing pursis	Exh.95

(7.1) In both these claim petitions, none of the opponents has adduced any oral or documentary evidence and the Ld. Advocate for the insurance company has filed closing pursis at Exh.96.

(8) Heard learned advocates appeared on behalf of respective parties, at length and in detail.

(8.1) Ld. Advocate for the claimants mostly reiterated the facts mentioned in the claim petition. It is also argued that the claimants were trainee employees of SRPF and they were

returning from firing butt in the bus, owned by the opponent no.1, at that time the bus turned turtle on the side of the road due to break failure. Therefore, the claimants are entitled for the compensation hence requested to allow present claim petitions.

(8.2) Ld. AGP has argued on behalf of the opponent no.1 that the bus was insured with the insurance company and the policy was in force on the date of accident. He has further stated that the driver of the bus shouted and informed the travelers of the bus about break failure. Further he argued that the road was rough and on the turn of the road, due to break failure, the bus could not take turn and turned on the side of the road. Thus, there was no negligence on the part of the driver. That the seating capacity of the bus was 51 but the number of employees traveled in the bus was less than seating capacity. Further, at the time of accident, the bus was insured with the New India Assurance Co. Ltd. and therefore the insurer is liable to pay compensation to the claimants.

(8.3) The Ld. Advocate for the insurer has not come forward to argue in this matter and therefore right of the insurance company to argue has been closed. But as per written statement of the insurance company, they mainly denied the claim petitions and contended that the claimants were employees of the opponent no.1, who is owner / insured of the offending vehicle and in a case of 'Act Policy' the insurance company is not liable in respect of death or bodily

injury to any person in the employment of the insured. Another contention of the insurer is that the insurance company has collected premium i.e. legal liability to passengers who may travel in the bus as third party but employee is not covered under the policy. The insured has not paid any additional premium to cover risk of legal liability for employee. Also, claimants are required to prove their income, injury. The quantum of compensation is highly exaggerated. The claimants are not entitled to claim relief as prayed. Hence, prayed to dismiss present claim petitions.

-: REASONS :-

Issue no.1 :-

- (9) As the present petitions filed u/Sec.166 of the MV Act, therefore, the claimant has to prove rash and negligence of opponent / driver. But it is settled position of the law that an action founded on the principle of fault liability, the proof of rash and negligent driving of the offending vehicle is *sine qua non*. However the standard of proof is not as strict as applied in Criminal Cases and evidence is to tested on the touchstone of preponderance of probabilities as settled principle of law by the Hon'ble Apex Court in case of *Bimla Devi & Ors. vs Himachal Pradesh Road Transport Corporation & Ors.* reported in (2009) 13 SC 530. Therefore, as per legal position, the claimants merely establish their case on the touchstone of preponderance of probability.

- (9.1) The claimants of both the claim petitions submitted their

oral evidence, in form of examination-in-chief, vide Exh.25 and Exh.26 respectively wherein they reiterated the facts averred in the claim petition at Exh.1. Both the claimants are cross-examined in detail by Ld. Advocate for the insurance company.

(9.2) The claimant of MACP No.26/2024 – Rakeshkumar Malivad stated in his cross-examination that the bus was going in a moderate speed but there was a stop at the place of accident and break of the bus failed therefore speed of the bus increased at the time of accident. He has also stated that there was a valley on one side of the road and the bus turned turtle on other side, which was straight. He stated that to save the bus from falling in a valley the driver turned the bus towards the pit and the bus fallen down in the roadside pothole / ditch. They were taken to hospital from the place of incident in 108. then he clarified that they were taken in 108 from Halol to Vadodara. He denied that he was fit. In the said bus 45-48 Jawans were sitting.

(9.3) That the claimant of MACP No.27/2024 – Mukeshkumar Vanzara admitted during his cross-examination that he was driving the bus and the break was complete when they were going to firing butt and it was rough / kachcha road. He denied that he lost control over the bus while returning. Regarding a question about speed, the claimant replied that the break failed on the sloppy road and therefore speed of the bus increased. He admitted that the

bus turned turtle on road after falling in pit. He stated that no hand break in the said bus. They were taken to Halol CHC in a Government vehicle and from Halol they were took to Vadodara in 108.

(9.4) The claimants have produced documentary evidence like copy of Station Diary (જાત્રીવાજોગ) Entry No.JJ/0029/2023 at Exh.44 and panchnama of place of accident at Exh.45. From this documents as well as oral evidence of claimants, it is came on record that the trainee employees of the SRPF, Dahod went for firing practice at Pavagadh and on returning from the firing butt, break of the bus failed on the sloppy turn of the rough / kachcha road, on one side of which there was a valley and a pit on other side, and therefore the bus turned turtle in the pit. In this accident, total 48 travelers of the bus, including claimants, have sustained injuries. Herein, both the claimants are eye witness of the accident and the claimant of MACP No.27/2024 – Mukeshkumar Vanzara was driving the bus and hence no reason to disbelieve their oral testimony. Moreover the insurance company has not produced any rebuttal evidence that contravene the oral testimony of the claimants. As per Exh.43, Mr. Janakkumar Shantilal Chavda, who was appointed as ADI to give training of Semester II to trainee of SRP Group 4, has given information of the accident to police at Government Hospital, Halol. Also considering the panchnama at Exh.45, which is supported the facts stated by the claimants and informant about the place of incident and

its surrounding. A copy of log book of the bus produced at Exh.46 which is supported the facts of the present petitions. Therefore, from the oral and documentary evidence on record, it is proved that break of the bus failed on sloppy rough road, while returning from the firing butt, and accident was occurred. Considering all these facts, there is a reason to believe that there was a valley on one side of the road and a pit on other side at the place of accident and hence driver turned the bus towards the pit to avoid the bus falling into valley, so it was turned turtle. Therefore, it is clear that the driver of the bus was not negligent at the time of accident but he was more conscious to save lives of the employees of the SRPF who were traveling in that bus. It shows that the accident occurred due to break of the bus did not work and claimatns sustained injuries. Thus, the driver of the bus was not negligent in causing this accident. Moreover, in the present accident, only one vehicle is involved i.e. bus no.GJ-18 G-8902.

(9.5) Moreover, the Station Diary Entry No.JJ/0029/2023 at Exh.44 as well as MLC, transfer summary, discharge summary, etc. produced vide Exh.53 to 58 and Exh.66 to 68 suggest that the claimants sustained injuries in the vehicular accident.

(9.6) Therefore, this Tribunal is held that the involvement of the bus no.GJ-18 G-8902 is proved in this accident but the negligence of the driver is not and hence my reply to the

issue no.1 is accordingly in partly affirmative.

Issue no.2 :-

- (10) So far as the point of quantum is concerned, the contention raised by the Ld. Advocate for the insurance company that both the claimants are Government employees, working with SRPF, and they are continued in their respective service and also getting rise in their pay on account of the so called injuries, in their service they have not sustained any loss. Under the circumstances, there was no actual loss sustained, while in service, by the injured claimants, and therefore, the claimants should not be awarded compensation for the future loss of income. In this regard, it is required to consider the ratio laid down by the Hon'ble Supreme Court in the case of *Raj Kumar vs Ajay Kumar* reported in **2011 ACJ 1**. In para (13) of that judgment, it is observed as under;

The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not to do as a result of the permanent ability [sic disability] (this is also relevant for awarding compensation under the head loss of amenities of life.) The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether [i] the claimant is totally disabled from earning any kind of livelihood, or [ii] whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or [iii] whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood.

Also in para (14) of the judgment, the Hon'ble Supreme Court has held as under;

It may be noted that when compensation is awarded by treating the loss of future earning capacity as 100 per cent (or even anything more than 50 per cent), the

need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation. Be that as it may.

- (10.1) I would also like to refer a judgment of Division Bench of the Hon'ble High Court of Gujarat in the case of *Narendrasinh Kubersinh Solanki vs Sattarbhai K. Mansuri* decided on 27.07.2018 in **First Appeal No.2341/2018** wherein the same scenario, as in the present case, was before the Hon'ble High Court. In that case also the injured / claimant was constable and sustained injuries in vehicular accident. In that case, the Hon'ble High Court held that *"Only because the appellant is working as constable and has been promoted as head constable, it cannot be said that the span of future income would be restricted to only till he remains in Government service, but the same has to be considered in light of the life span of a person which also includes post retirement period also as decided by the Hon'ble Division Bench in the aforesaid judgments. In the case on hand also the appellant would be entitled to compensation by adopting multiplier of 5 as there is no economic loss."* In the present case also, both the claimants were employees of SRPF and both they have sustained injuries, resulting into partial permanent disability, in a vehicular accident. The claimant Vanzara Mukeshkumar (of MACP No.27/2024) has been continue in his job and he has not suffered any financial loss after the said accident. Whereas the claimant Malivad Rakeshkumar (of MACP No.26/2024) had left his job as LRD from the SRPF as he got another job

with R & B Department. As per oral evidence of claimants' witness Premchandbhai Gavabhai Machhar, at Exh.80, Rakeshkumar has given resignation. It transpires from the Exh.83 that his resignation was granted by the SRPF, Group IV, Pavdi, Dist. Dahod vide its letter no.મકમ/૨૧૮/૨૧૭૦૧૫/૩૯૩/૨૦૨૪ dated 05.03.2024 as he got government job as Work Assistant (Class 3) at Vadodara R & B Department. Thus Rakeshkumar resigned from his job of LRD with SRPF as he has been appointed as Work Assistant with R & B Department, which is a better opportunity with smarter pay than his earlier job. Therefore, it is clear that the claimant of MACP No.26/2024 namely Rakeshkumar had not suffered any financial loss after the accident.

(10.2) Therefore, considering this ratio laid down by the Hon'ble High Court of Gujarat in the case of **Narendrasinh Kubersinh Solanki (Supra.)**, this Tribunal is also of the opinion that the claimants would be entitled to compensation by adopting multiplier of 5 as there is no economic loss. Therefore, the compensation to the claimants is calculated hereunder.

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(11) As per the claimant, his salary was Rs.29,800/- per month at the time of accident. The claimant has also produced salary slips for the months August 2023 to February 2024 vide Exh.81 which suggests that in the month of accident, i.e. October 2023, his salary was Rs.29,800/-. Therefore, it is

adopted and therefore annual income of the claimant is Rs.3,57,600/-.

(11.1) The claimant has produced an MLC issued by Halol CHC, transfer summary, discharge summary of Samanvay Hospital, Vadodara vide Exh.53 to Exh.58 respectively. From all these documents, the following injuries were revealed;

- Contusion in anterior segment of left upper lobe.
- Multiple ribs fractures n right side on its lateral aspect from 7th t 9th ribs.
- Pneumothorax on left side with air collection
- Large well defined non enhancing hypodense areas invlving right lobe of liver s/o contusion with intraparenchymal hematoma (Grade V injury)
- Multiple irregular linear and branching involving Segment VI and VII of right lobe of liver s/o laceration
- Intraperitneal and within pelvic cavity free fluid collection

The claimant has produced a disability certificate vide Exh.61 wherein permanent partial disability of the claimant is assessed 47% of whole body. But the parties have submitted pursis vide Exh.93, with consent of each other, to consider the disability of the claimant @ 24% of whole body.

(11.2) As per the claimant, he has to resign from his service at SRPF due to injuries sustained in this accident. But, as discussed above, considering the documents produced on record vide Exh.82 and 83, it reveals that the said claimant Rakeshbhai has resigned from his service as he got another job with R & B Department which has better future prospect

with smarter pay scale. Therefore, considering the ratio laid down by the Hon'ble High Court in the case of **Narendrasinh Kubersinh Solanki (Supra.)** as well as all the above aspects, the claimant would be entitled to compensate by adopting multiplier of 5 as there is no economic loss. Therefore, loss of earnings to the claimant is calculated as Rs.3,57,600 x 24% (disability) = 85,824 x 5 (multiplier) = **Rs.4,29,120/-** towards future loss of income.

(11.3) Herein, the claimant has examined his witness Premchandbhai Gavabhai Machhar at Exh.80, who during his deposition has produced an office order vide letter no.મકમ/શીટ/નિરાકરણ/૩૮૮/૨૦૨૪ dated 05.03.2024 vide Exh.84 whereby 125 days leave without pay of the claimant has been approved and connected sheet at Exh.85 suggests that Rs.1,20,968/- has been recovered from Rakeskumar as his resignation was granted. A copy of challan at Exh.86 suggests that the claimant Rakeshkumar has deposited Rs.1,20,968/- toward recovery of his pay. Therefore, from the above oral as well as documentary evidences, claimant Rakeshkumar is entitled to get **Rs.1,20,968/-** towards actual loss of income.

(11.4) Herein, the claimant sustained fracture injuries over various parts of his body and the medical papers produced at Exh.53 to Exh.58 suggest that the claimant taken treatment at Samanvay Hospital, Vadodara from 30.10.2023 to 08.11.2023 and from 16.01.2024 to 17.01.2024. This claimant was also treated as indoor patient at Padmanabh Surgical Hospital,

Godhra from 08.11.2023 to 11.11.2023 and 18.11.2023 to 26.11.2023. That the claimant was operated during his stay at the hospital. Therefore, I am of the opinion that the claimant is entitled for **Rs.50,000/-** towards mental pain, shock and sufferings as well as **Rs.25,000/-** for transportation, attendants and special diet.

(11.5) The claimant has produced medical bills worth Rs.6,35,838/- at Exh.59 for purchasing medicines and treatment charges. Also it is clear from the pleading as well as record that the claimant had taken treatment at private hospitals at Vadodara and Godhra. Hence, there is a reason to believe that he must had spent much amount towards operation and treatment at hospital. Therefore, considering all the aspects, it would be just, proper and reasonable to award Rs.6,35,838/- towards medical expenses.

(11.6) Therefore, the claimant is entitled to get the compensation as calculated herein under;

Future loss of income	Rs.4,29,120/-
Actual loss of income	Rs.1,20,968/-
Pain, shock and sufferings	Rs.50,000/-
Medical expenses	Rs.6,35,838/-
Transportation, Special diet & attendance	Rs.25,000/-
T O T A L . . .	Rs.12,60,926/-

MACP No.27 of 2024

(12) In this claim petition, claim Mukeshbhai is employee of the SRPF, Dahod and he was getting salary of Rs.47,600/- per month at the time of accident. He produced his salary slip for

the month of accident i.e. October 2023 at Exh.71 and Exh.88 which supports his pleading. Therefore, it is required to adopt Rs.47,600/- as monthly salary of the claimant and hence his annual income comes to Rs.5,71,200/-.

(12.1) The claimant has produced his MLCs, treatment and medical examination papers and reports, discharge summary, etc. vide Exh.66 to Exh.68 respectively. From all these documents, the following injuries were revealed;

- Comminuted displaced fractures involving neck and intertrochanteric region of right femur
- Detached fracture fragment adjacent to fracture show well corticated margin
- Fracture involving lateral end of right clavicle
- Linear displaced fracture involving anterior and posterior wall of left frontal sinus with changes of hemosinus
- Two detached bony fragments of approx. size 1.7 x 1.0 cm and 1.4 x 1.2 cm is noted in frontal sinuses
- Mildly displaced fracture involving lateral pterygoid plate on left side
- Minimally displaced fractures involving posterolateral wall of left maxillary sinus with changes of hem sinus.
- Multiple tiny air foci in subcutaneous region in cheek region on either side.

The claimant has produced a disability certificate vide Exh.70 wherein permanent partial disability of the claimant is assessed 32% of whole body. But the parties have submitted pursis vide Exh.94, with consent of each other, to consider the disability of the claimant @ 19% of whole body.

(12.2) Herein, the claimant is continued in his service with SRPF and he admitted said fact during his cross-examination by the Ld. Advocate for the insurer. The claimant deposed in his oral evidence that he has been allotted a light work after the said accident. But nothing came on record that he is getting lesser salary than he was getting prior to the accident or he has not got promotion due to injury sustained in the accident. Therefore, considering the ratio laid down by the Hon'ble High Court in the case of **Narendrasinh Kubersinh Solanki (Supra.)** as well as all the above aspects, the claimant would be entitled to compensate by adopting multiplier of 5 as there is no economic loss. Therefore, loss of earnings to the claimant is calculated as $\text{Rs.}5,71,200 \times 19\% \text{ (disability)} = 1,08,528 \times 5 \text{ (multiplier)} = \text{Rs.}5,42,640/-$ towards future loss of income.

(12.3) In the present case, it transpires from Exh.89 that the claimant has availed 162 days earned leave during his sick period from 30.10.2023 to 08.04.2024. As the monthly salary of the claimant was Rs.47,600/- therefore his pay for a day was Rs.1586.66 Ps. $(47,600 / 30)$ and as he was on earned leave for 162 days, therefore he is entitled for **Rs.2,57,040/-** towards actual loss of income.

(12.4) Herein, the claimant sustained fracture injuries over various parts of his body and the medical papers produced at Exh.66 to Exh.68 suggest that the claimant taken treatment at Samanvay Hospital, Vadodara from 30.10.2023 to 08.11.2023 and from 25.12.2023 to 27.12.2023. That the claimant was

operated during his stay at the hospital. Therefore, I am of the opinion that the claimant is entitled for **Rs.50,000/-** towards mental pain, shock and sufferings as well as **Rs.25,000/-** for transportation, attendants and special diet.

(12.5) The claimant has produced medical bills worth Rs.5,15,415/- at Exh.69 for purchasing medicines and treatment charges. Also it is clear from the pleading as well as record that the claimant had taken treatment at private hospital at Vadodara. Hence, it is obvious that he must have spent much amount for operation and treatment at hospital. Therefore, considering all the aspects, it would be just, proper and reasonable to award Rs.5,15,415/- towards medical expenses.

(12.6) Therefore, the claimant is entitled to get the compensation as calculated herein under;

Future loss of income	Rs.5,42,640/-
Actual loss of income	Rs.2,57,040/-
Pain, shock and sufferings	Rs.50,000/-
Medical expenses	Rs.5,15,415/-
Transportation, Special diet & attendance	Rs.25,000/-
T O T A L . . .	Rs.13,90,095/-

Liability :-

(13) As discussed above, in issue no.1, involvement of the Bus No. GJ-18 G-8902 is proved and the accident was occurred due to break of the bus failed at the relevant time. Therefore the driver of the bus (*opponent no.2 of MACP No.26/2024 and the claimant of MACP No.27/2024*) is hereby ordered to be exonerated from paying any compensation. That the opponent

no.1 is the owner of the bus as it is proved from the copy of log book (Exh.46), fitness certificate (Exh.47), RC Book (Exh.48), etc. Moreover it transpires from the copy of insurance policy at Exh.49 that the said bus was insured with The New India Assurance Co. Ltd. (*opponent no.3 in MACP No.26/2024 and opponent no.2 in MACP No.27/2024*) and the policy was in force at the time of accident. Therefore, the owner / insured and the insurer (*opponent no.3 in MACP No.26/2024 and opponent no.2 in MACP No.27/2024*) are liable to pay compensation to the claimants. Therefore my reply to the issue no.2 is accordingly.

- (14) The awarded amount shall carry interest at the rate of 6% per annum from the date of the application till realization, hence, for the issue no.3, I pass the following final order in the interest of justice.

|| ORDER ||

- (1) The present claim petitions are partly allowed.
- (2) **In the MACP No.26/2024**, the opponent nos.1 and 3 are jointly and severally liable to pay **Rs.12,60,926/- (Rupees Twelve Lakh Sixty Thousand Nine Hundred Twenty Six only)** together with interest at the rate of 6% per annum from the date of filing of Claim Petition till its realization to the claimant.

The opponent no.2 of MACP No.26/2024 is hereby ordered to be exonerated.

- (3) **In the MACP No.27/2024**, the opponent nos.1 and 2 are

jointly and severally liable to pay **Rs.13,90,095/- (Rupees Thirteen Lakh Ninety Thousand Ninety Five only)** together with interest at the rate of **6%** per annum from the date of filing of Claim Petition till its realization to the claimant.

- (4) The opponents are ordered to deposit the above amount with interest and costs, with this Tribunal, within 30 days from the date of receipt of the Judgment and award as per the guideline of the Hon'ble Supreme Court, through RTGS/NEFT into the following Bank Account maintained by the Tribunal Mahisagar at Lunawada.

BANK NAME	STATE BANK OF INDIA, LUNAWADA
NAME OF ACCOUNT	MOTOR ACCIDENT CLAIM TRIBUNAL, LUNAWADA
TYPE OF ACCOUNT	CA-GOVT-DEPT-AUTO BODY- INR
BANK ACCOUNT NO.	40748248570
IFSC CODE	SBIN0001294
BRANCH NAME	FUVARA CHOWK, LUNAWADA
E-MAIL ADDRESS	mact-mahisagar@gujarat.gov.in

- (5) The opponents shall pay the proportionate costs of claim petition incurred by the claimant and shall bear their own.
- (6) From the amount of compensation, amount of requisite Court Fees, if any, be deducted first and credited to the State.
- (7) From the amount of compensation, amount if any, paid to the claimant as Interim Compensation on the head of "No Fault Liability" be deducted first.

- (8) Thereafter, from the remaining amount, 30% be paid to the claimant by A/c. Payee Cheque / RTGS / NEFT only after due verification and remaining 70% amount be kept in Fix Deposit in any Nationalized Bank in the name of claimant for the period of 5 (Five) years.
- (9) The claimant shall not be entitled to raise any loan, withdrawal, advance and/or any kind of burden against the said deposited amount in Nationalized Bank but he is entitled to the periodical interest for the deposited amount in Nationalized Bank.
- (10) Award to be drawn accordingly.
- (11) PDF copy of this judgment and Award be sent to opponent – insurance company through e-mail.

Pronounced in the open Court today
on this 29th day of June, 2026.

Date : 29.06.2026
Lunawada.

(M. N. Gadkari)
M. A. C. Tribunal (Main),
Mahisagar at Lunawada.
[GJ00425]