

GJMH010019792021



MACP NO.157 OF 2021 (MAIN)	
Presented on	07.07.2021
Registered on	07.07.2021
Decided on	13.03.2026
Duration	Year-Month-Day
	04-08-06

**BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL
(MAIN) AT MAHESANA
JUDGEMENT PASSED**

IN

**MOTOR ACCIDENT CLAIM PETITION NO.157 OF 2021
(MAIN)**

WITH

MOTOR ACCIDENT CLAIM PETITION NO.158 OF 2021

WITH

MOTOR ACCIDENT CLAIM PETITION NO.159 OF 2021

&

MOTOR ACCIDENT CLAIM PETITION NO.160 OF 2021

APPLICANTS OF M.A.C.P NO.157 OF 2021:

Heirs of deceased **Sathwara Hiralben Pravinbhai**

**1. Sathwara Pravinbhai Prahladbhai
(Deleted)**

2. Sathwara Nayanaben Pravinbhai

Aged about 53 years,

Occupation: Housework,

R/o. Pilvai, Ambaji Sheri, Tal. Vijapur, Dist. Mahesana.

**CLAIM U/S. 166 OF M.V. ACT TO GET
COMPENSATION OF RS.1.00 Crore.**

APPLICANTS OF M.A.C.P NO.158 OF 2021:

Sathwara Devangkumar Pravinbhai

Aged about 22 years,

Occupation: Study,

R/o. Pilvai, Ambaji Sheri, Tal. Vijapur, Dist. Mahesana.

**CLAIM U/S. 166 OF M.V. ACT TO GET
COMPENSATION OF RS.10.00 Lakh.**

APPLICANT OF M.A.C.P NO.159 OF 2021:

Sathwara Nayanaben Pravinbhai

Aged about 53 years,

Occupation: Housework,

R/o. Pilvai, Ambaji Sheri, Tal. Vijapur, Dist. Mahesana.

**CLAIM U/S. 166 OF M.V. ACT TO GET COMPENSATION
OF RS.3.00 Lakh.**

APPLICANT OF M.A.C.P NO.160 OF 2021:

Sathwara Asmit Sureshkumar

Aged about 21 years,

Occupation: Study,

R/o. Pilvai, Ambaji Sheri, Tal. Vijapur, Dist. Mahesana.

**CLAIM U/S. 166 OF M.V. ACT TO GET COMPENSATION
OF RS.2.00 Lakh.**

VERSUS

COMMON OPPONENTS IN ALL MACPs:-

- 1. Driver of Car No.GJ-4-DA-8018**
Riyajbhai Harunbhai Agariya
Aged about 26 years,
Occupation: Driving,
R/o. 219, Gokul Chowk, Budhel,
Bhavnagar.
- 2. Owner of Car No.GJ-4-DA-8018**
Rajendra Pyarelal Agrawal
Adult, Occupation: Business,
R/o. 114, Keshariya Hanuman Road,
Ram Mantra Mandir, Kaliyabid,
Bhavnagar.
- 3. Insurance Co. of Car No.GJ-4-DA-8018**
CholaMandalam General Insurance Co. Ltd.,
Shop No.2, 2nd Floor, Ketul Chamber, Highway Road,
Mahesana.
- 4. Owner of Car No.GJ-02-CP-4677**
As the applicant No.1 was the owner of the Car and hence
not joined.
- 5. Insurance Co. of Car No.GJ-02-CP-4677**
ICICI Lombard General Insurance Co. Ltd.,
Jayshri Building, Nr. Kokila Trading,
Mahesana- Ahmedabad Highway, Mahesana.

APPEARANCE IN ALL MACPs:-

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Mr. J.S. Oza, Ld. Advocate for the applicants.
Mr. N. R. Bhavsar, Ld. Advocate for opponent No.3.
Mr. S.I. Shah, Ld. Advocate for opponent No.5.
Opponent Nos.1, 2 & 4 not appeared.

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COMMON JUDGMENT

1. As common question of law and facts arise in this group of petitions and as such arising out of self same accident, all the claim petitions are decided and disposed of by way of this common judgment. As, all the claim petitions are ordered to be consolidated, the evidence are led in main MACP No.157 of 2021, which are considered for deciding all the claim petitions.
2. The brief facts leading to the present claim petitions are that; on 29.03.2021, when the applicant along with her daughter and other family members were passing in their car bearing registration No.GJ-02-CP-4677 from Shamlaji-Himmatnagar road in a moderate speed, observing traffic rules and on the correct side road, at that time, the driver of one Car bearing registration No.GJ-4-DA-8018 came in an excessive speed, endangering human life and wrong side of the road and dashed with their car, as a result thereof, the daughter of applicant sustained grievous

injuries and succumbed to her injuries, whereas applicants were sustained grievous injuries. As such, impugned accident was occurred upon sole negligence on the part of the driver of vehicle Car No.GJ-4-DA-8018 involved in the accident, the applicants have preferred present claim petitions under Section 166 of M.V. Act to get compensation from the opponents under various heads.

3. The opponent No.5- ICICI Lombard General Insurance Co. Ltd. has filed its Written Statements in all the claim petitions and denied the facts of the claim petitions and mainly averred that the driver of vehicle Car No.GJ-02-CP-4677 alleged to have been involved in the accident was not holding a valid and effective driving license at the time of accident and was not qualified for holding or obtaining such driving license and has not satisfied the requirements of the Rule No.3 of the Central Motor Vehicles Rules, 1989. It has been further submitted that the alleged accident took place due to the sole negligence on the part of the driver of vehicle No.GJ-04-DA-8081 and Police Investigating Officer has charge-sheeted the driver of vehicle No.GJ-04-DA-8081 for his negligent driving. The opponent has also denied the age and income of the victim/s at the relevant time of accident and applicants have been asked to prove the same with cogent

documentary evidence. Thus, it is prayed to dismiss the claim petitions with cost.

4. The opponent No.3- Cholamandalam MS General Insurance Co. Ltd. appeared through its learned Advocate and filed their Written Statements in all the claim petitions and denied the facts stated in the claim petitions. It has been submitted that the alleged accident took place on 29/03/2021 and FIR of the said accident was filed on 31/03/2021 i.e. after delay of two days, but applicant has not given any clarification regarding delay for filing FIR and also as per Pancnama, Vehicle No.GJ-4-DA-8018 was not seen on the accident spot and also after the accident, deceased has been taken to the hospital, though doctor of that Hospital has not given information to the Police authority regarding the accident. So, from all the above facts there is doubt that deceased was injured due to any vehicular accident and vehicle No.GJ-4-DA-8018 was involved in the accident. Hence, unless applicant proves factum of accident and involvement of vehicle No.GJ-4-DA-8018, present opponent will not liable for compensation. It has been further submitted that the driver of Car No.GJ-4-DA-8018 was not holding valid and effective driving license on the date of accident and hence, present opponent is not liable for the claim or any part thereof. In alternative, it is submitted that at the relevant

time of accident vehicle car No.GJ-4-DA-8018 was driven with slow speed and on the correct side of the road and driver was quite careful in driving the said vehicle, but driver of vehicle Car No.GJ-02-CP-4677 came in full speed and in wrong side of the road, where diversion was given and dashed with the Car No.GJ-4-DA-8018 and thus, the said accident happened wholly on account of the negligence on the part of the driver of vehicle GJ-2-CP-4677, despite every care being exercised by the driver of the Car No.GJ-4-DA-8018 to aver the accident. Hence, the driver of vehicle Car No.GJ-2-CP-4677 responsible for the accident as he was not holding valid driving license. The opponent has also denied the age and income of the victim/s and applicants have been asked to prove the same with cogent documentary evidence. Thus, it is prayed to dismiss the claim petitions with cost.

5. In support of the present claim petitions, the applicants have produced the following oral as well as documentary evidence.

Sr. No.	Particulars	Exh.
1	Examination In Chief on Affidavit of applicant of MACP No.157 & MACP No.159 of 2021.	40
2	Examination In Chief on affidavit of applicant of MACP No.158 of 2021.	41
3	Examination In Chief on Affidavit of applicant of MACP No.160 of 2021.	45

MACP NOS.157 OF 2021		
6	Copy of FIR.	46
7	Copy of Spot Panchnama.	47
8	Copy of Inquest Panchnama.	48
9	Copy of P.M. Note of deceased Hiralben.	49
10	Copy of RC Book of Car No.GJ-04-DA-8018.	50
11	Copy of Insurance Policy of Car No.GJ-04-DA-8018.	51
12	Copy of R.C. Book of Car No.GJ-02-CP-4677.	52
13	Copy of Insurance Policy of Car No.GJ-02-CP-4677.	53
14	Copy of Charge-sheet.	54
15	Copy of School Leaving Certificate of Hiralben.	55
16	Copy of documents showing educational qualification of deceased Hiralben.	56 to 67
17	Copy of Aadhaar Card of Hiralben.	68
18	Copy of PAN Card of Hiralben.	69
19	Copy of Bank Statement of Hiralben.	118
20	Certificate of income.	119
MACP NO.158 OF 2021		
1	Copy of documents showing educational qualifications of applicant.	70 to 74 & 76 to 82
2	Copy of School Leaving Certificate of applicant.	75 & 53

3	Discharge Card of Lions General Hospital.	83	
4	Discharge Summary.	84	& 85
5	Medical Reports.	86	to 91
6	Disability Certificate.	115	
7	Payment Receipt.	116	
8	Medical Bills.	92	
9	Copy of Aadhaar Card of applicant.	94	
MACP NO.159 OF 2021			
1	Medical treatment paper.	100	
2	Treatment Certificate.	101	
3	Medical Reports.	102	to 107
4	Disability Certificate.	108	
5	Medical Bills.	109	
MACP NO.160 OF 2021			
1	Copy of MLC (Certificate).	95	
2	Medical Bills.	96	to 98
3	Disability Certificate.	99	

6. The opponent No.5- ICICI Lombard General Insurance Co. Ltd. has examined its witness vide Exh.121 and produced copy of Charge-sheet vide Exh.122 and copy of Driving License of Devangkumar P Satvara – applicant of MACP No.158 of 2021 vide Exh.123.

7. The opponent No.3- Cholamandalam MS General Insurance Co. Ltd. has examined its witness i.e. opponent No.1- Riyazbhai Harunbhai Agariya vide Exh.126.
8. Learned Advocate for opponent No.5 has produced his Closing of Evidence Pursis vide Exh.125.
9. After considering the oral arguments canvassed by learned Advocates for respective parties and also considering the oral as well as documentary evidence produced on record, this Tribunal has framed the following issues in MACP No.157 of 2021 vide Exh.24 and in MACP No.158 of 2021 vide Exh.20, MACP No.159 of 2021 vide Exh.21 and MACP No.160 of 2021 vide Exh.21 for determination of the claim petitions:-

ISSUES

(MACP NO.157 OF 2021)

- (1) Whether claimant proves that the deceased sustained injuries and died on account of such injuries due to rashness/ negligent driving on the part of drivers of the vehicles involved in the accident?
- (2) What amount, if any, claimants are entitled to, by way compensation and from which of the opponent?
- (3) What order and award?

My findings to the above issues are as under:-

Issue No.1 : In affirmative.

Issue No.2. : As per final order.

Issue No.3 : As per final order.

ISSUES

(MACP NO.158 of 2021, MACP No.159 of 2021 and MACP No.160 of 2021)

1. Whether claimant proves that the deceased sustained injuries and died on account of such injuries due to rashness/ negligent driving on the part of drivers of the vehicles involved in the accident?
2. What amount, if any, claimants are entitled to, by way compensation and from which of the opponent?
3. What order and award?

My findings to the above issues are as under:-

Issue No.1 : In affirmative.

Issue No.2. : As per final order.

Issue No.3 : As per final order.

REASONS

10. **Issue No.1:-**

Negligence:-

In this group of petitions, the applicant of MACP No.158 of 2021 – Sathvara Devangkumar Pravinbhai has produced his Examination In Chief on affidavit vide Exh. 41,

wherein he has submitted that the driver of Car No.GJ-4-DA-8018 came in excessive speed, endangering human life and in the wrong side of the road and dashed with their Car No.GJ-2-CP-4677. The accident was occurred due to sole negligence in driving on the part of driver of Car No.GJ-04-DA-8018. Learned Advocate for the opponent No.5 has cross-examined the said applicant, wherein he has specifically admitted that he was driving the Swift Car at the relevant time of accident. It has been further admitted that he was possessing Learner's Driving License at the relevant time of accident. It has been further admitted that he had obtained learning license four days prior to the accident. It has been further admitted that his sister Hiralben was having driving license. However, he has not produced driving license of his sister Hiralben. Learned Advocate for the opponent No.3 has cross-examined the said applicant, wherein he has admitted that there was diversion on the road at the place of accident and work of road was in progress. It has been further admitted that due to diversion of road, divider was not present. It has been also admitted that accident was occurred due to head on collision. The said fact has been admitted by the applicants of respective claim petitions in their Examination In Chief on affidavit. It is pertinent to note here that the applicants were the eye witness to the accident and have specifically admitted in their

examination in chief on affidavit that accident was occurred due to head on collision. It is also pertinent to note here that though the applicant of MACP No.157 of 2021 – driver of car No.GJ-2-CP-2021 himself as well as other applicants – victims have admitted in their cross-examination that accident was occurred due to head on collision and who are the eye witness to the accident, and therefore, there is no reason to disbelieve that accident was occurred due to head on collision. Moreover, the opponent No.3- Insurance Co. has examined the opponent No.1- driver of Creta Car No.GJ-4-DA-8018 as witness, wherein he has specifically submitted that due to diversion of road due to maintenance work of road, the speed of his car was slow and driver of Swift Car came in excessive speed and dashed with left side of his car from opposite direction. The accident was occurred due to sole negligence in driving on the part of driver of Swfit Car. Learned Advocate for opponent No.5 has cross-examined the opponent No.1, wherein he has admitted that the Police has filed charge-against him for the accident. Learned Advocate for applicant has also cross-examined the said witness, wherein he has admitted that he has not filed written statement to the present claim petition. Now, perusing the FIR produced vide Exh.46, it clearly shows that both the vehicles were involved in the accident. Also, perusing the Spot Panchnama produced vide Exh.47, it

clearly transpires that broken fibre parts of vehicles were lying at the place of accident. It is also transpired that board of DIVERSION CHETAK ENTERPRISES LTD. was also lying at the place of accident. From the Spot Panchnama, it is clearly established that due to diversion of road, one side of the road was closed for maintenance work of road and only one side of the road was available for passing of the vehicles. The applicant of MACP No.158 of 2021 himself has admitted in his cross-examination that he was driving the car and was having learning license at the relevant time of accident and his sister deceased- Hiralben was possessing driving license at the relevant time of accident. Moreover, the opponent No.5 has examined its witness Parekh Devangkumar Bhikhubhai vide Exh.121, wherein he has submitted that the driver of vehicle GJ-2-CP-4677 was not holding Pakka driving license, but was having Learner's License at the time of accident. As per Rule No.3 of Motor Vehicle Rules, the driver of vehicle must possess legal and valid driving license and if, driver of vehicle possesses Learner's License, such person is accompanied by an instructor holding an effective driving License to drive the vehicle and such instructor is sitting in such a position to control or stop the vehicle. Here, in the present case, no person accompanying by an instruction holding an effective driving license to drive the vehicle sitting in the

car and thereby, breached the terms and conditions of the insurance policy. Learned Advocate for opponent No.5 has cross-examined the said witness of opponent No.-3, wherein he has admitted that document produced vide Mark 37/2 is the Learner's Driving License of applicant of MACP No.158 of 2021, which is exhibited as Exh.123. Learned Advocate for applicant has also cross-examined the said witness of opponent No.3, wherein he has admitted that it is mandatory that a person who is holding permanent driving license can be sitting next to a driver with a learning license. It has been further submitted that at the time of accident no person holding permanent driving license was sitting with the driver holding learner license. The applicant of MACP No.158 of 2021 has submitted in his examination in chief on affidavit that his sister – deceased Hiralben was holding driving license at the time of accident and he is ready to produce the same. However, the applicants have not produced any kind of driving license of Hiralben. Further, applicants have produced various documents like copy of FIR, Charge-sheet, Inquest Panchnama and P.M. Note, Injury Certificates, medical papers and Disability Certificates from which it transpires that deceased Hiralben sustained grievous injuries and succumbed to her injuries and other applicants have sustained grievous injuries in the vehicular accident. Thus, perusing the oral as well as documentary

evidence produced on record, it seems that the accident took place on account of the contributory negligence on the part of drivers of both the offending vehicles. As such accident was occurred and victims sustained grievous injuries in a vehicular accident and alleged accident took place because of negligence on the part of drivers of both the vehicles is to be attributed to the extent as contributory negligence, and therefore, negligence on the part of driver of Car No.GJ-2-CP-2021 i.e. applicant of MACP No.158 of 2021 is held at 50% and negligence on the part of driver of the Creta Car bearing registration No.GJ-4-DA-8018 is held at 50% and hence, I answer issue No.1 in the affirmative accordingly.

11. **Issue No.2:- Quantum of Compensation:-**

That so far as question of compensation is concerned, all the claim petitions are dealt with individually.

12. **M.A.C.P. NO.157 OF 2021**

Age & Multiplier:- So far as age of the deceased Hiralben is concerned, the applicant has produced copy of School Leaving Certificate of deceased Hiralben vide Exh.55, wherein the Date of Birth of deceased has been mentioned as 07/08/1994 and accident was occurred on 29/03/2021, which shows that deceased Hiralben was aged 27 years at the relevant time of accident. Thus, considering age of deceased as 27 years at the time of accident,

claimant is entitled to get multiplier of '17', as held by the Hon'ble Apex Court in "*National Insurance Co. Ltd. Vs. Pranay Sethi & Ors.*", reported in 2017 SC – 1050.

13. Income:-

So far as source of income of the deceased is concerned, the applicant has filed her Examination In Chief on Affidavit at Exh.40 and submitted that deceased Hiralben was earning Rs.30,000/- per month by doing service as Professor in the Pilvai Science College and also earned Rs.20,000/- from giving tuition. Learned Advocate for the opponent No.5 has cross-examined the applicant, wherein she has admitted that her daughter Hiral was unmarried. Her husband was Contractor and having all responsibilities of their family and also maintaining them. Learned Advocate for the opponent No.3 has also cross-examined the applicant, wherein she has admitted that her daughter was doing service on temporary basis. She has further admitted that she has not produced any document showing that her daughter was earning from tuition. In support of source of income, the applicant has produced Certificate Exh.119 issued by Principal, Shri U.P. Arts, Smt. M.G. Panchal Science & Shri V.L. Shah Commerce College, Pilvai certifying that Hiralben Pravinbhai Sathvara is working as Assistant Professor in Chemistry Department since 02/07/2018 and she has been paid Rs.25,000/- per month towards salary. Thus, monthly income of the

deceased is considered as Rs.25,000/- per month at the relevant time of accident.

14. As such, the applicant has admitted that her daughter was working as Professor and her job was temporary, and therefore, deceased can be said as self employed person and below the age of 40 years., Therefore, 40% amount i.e. Rs.10,000/- is required to be included in the monthly income and the net dependency loss would comes to Rs.35,000/- (Rs.25,000/- + Rs.10,000/-) per month. In the present case, the deceased was unmarried and dependent on the income of the husband of the applicant as admitted in her cross-examination and deceased was survived by the parents and dependent on the income of the parents, and therefore, 1/2 amount is required to be deducted as personal expenses of the deceased. Thus, after deducting 1/2 amount Rs.17,500/- (1/2 of Rs.35,000/-) from monthly income, the net dependency loss would come to Rs.17,500/-, which can be considered as monthly loss of dependency and yearly, it would come to Rs.2,10,000/- (Rs.17,500/- x 12 months). As discussed above, after applying multiplier of 17, the amount would comes to **Rs.35,70,000/-** (Rs.2,10,000 x 17 multiplier), which can be awarded as loss of dependency to the claimants.
15. Further, as per decision of Hon'ble Apex Court in case of *Magma General Insurance Co. Ltd. V/s. Nanu Ram*, reported in 2018 **ACJ 2782 (SC)**, and in the case of

National Insurance Co. Ltd. V/s. Pranay Sethi, reported in **2017 ACJ 2700**, the claimants are entitled for Rs.48,400/- under the head of filial consortium, Rs.18,150/- under the head of loss of estate and Rs.18,150/- towards funeral expenses. As a result the amount of compensation would come as under, which is just and reasonable and I award the same:

1	For loss of dependency	Rs.35,70,000.00
2	Loss of consortium	Rs.48,400.00
3	Loss of estate	Rs.18,150.00
4	For funeral expenses	Rs.18,150.00
	Total...	Rs.36,54,700.00

Thus, applicants are entitled to get compensation of **Rs.36,54,700/- (Rupees Thirty Six Lakh Fifty Four Thousand Seven Hundred only)** under all the heads.

16. **M.A.C.P. NO.158 OF 2021.**

Age and Multiplier:- So far as age of the applicant is concerned, the applicant has produced copy of his School Leaving Certificate vide Exh.75, wherein the date of birth of applicant has been mentioned as 07/09/1998 and accident was occurred on 29/03/2021, which shows that applicant was aged 21 years at the relevant time of

accident. Thus, considering the age of the applicant as 21 years at the relevant time of accident, multiplier of '18' is applicable to the case of applicant 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".

17. **Income:-** So far as source of income of the applicant, the applicant has produced his Examination In Chief on affidavit at Exh.41 and submitted that he was studying in the 4th year of Computer Engineering and earned Rs.10,000/- per month by giving tuition. Learned Advocate for the opponent No.5 has cross-examined the applicant, wherein he has admitted that he has not produced any document in support of his source of income. The applicant has produced documents vide Exh.70 to 82 for his educational qualification from which it transpires that the applicant was studying in 4th year of B.E.. Thus, looking to the bright future, qualification of applicant and as averred in claim petition as well as in his examination in chief on affidavit, the income of **Rs.10,000/-** is required to be considered as monthly income of the applicant.
18. The applicant has produced Disability Certificate at Exh.115, wherein the Doctor has assessed permanent disability of as 53% of the body as a whole, but as per the endorsement made thereon with consent of other side to the effect that the disability may be considered as 42% of

the body as a whole, and hence, disability is considered as **42%** of the body as a whole.

19. As discussed above, considering the age of the applicant as 21 years, monthly income of Rs.10,000/-, permanent disability 42% and multiplier of 18, the applicant is entitled towards future loss of income of **Rs.9,07,200/-** [Rs.10,000 X 42% = Rs.4,200/- X 18 = Rs.75,600 X 12 months = Rs.9,07,200/-].
20. Looking to the injuries and period of recovery, the applicant is entitled to get compensation under the head of actual loss for 4 months, which comes to **Rs.40,000/-**, which is awarded to the applicant under the head of actual loss of income.
21. Looking to the nature of injuries, the applicant had suffered pain, shock and suffering, hence in my opinion, applicant is entitled **Rs.20,000/-** towards pain, shock and suffering.
22. Considering the disability and treatment as an indoor patient for some days, in my opinion, applicant is entitled **Rs.20,000/-** towards special diet charge and attendant charges.
23. The The applicant has also produced Medical Bills vide Exh.116 & 92 of **Rs.2,93,970/-**, which is awarded to the applicant under the head of Medical Expenses.
24. Therefore, the applicant is entitled for various amount of compensation as follows:-

Amount	Head
Rs.9,07,200/-	Towards future loss of income.
Rs.40,000/-	Towards actual loss of income
Rs.20,000/-	Towards pain, shock and suffering
Rs.20,000/-	Towards S.A.T. charges.
Rs.2,93,970/-	Towards medical expenses.
Rs.12,81,170/-	Total compensation under all heads.

As discussed in issue No.1 that applicant himself had contributed in the accident and negligence of applicant is attributed to the extent 50% and hence, 50% amount is required to be deducted from total awarded amount of compensation, which comes to Rs.6,40,585/-. Thus, applicant is entitled to get compensation of **Rs.6,40,585/- (Rupees Six Lakh Forty Thousand Five Hundred Eighty Five only)** under all heads.

25. **M.A.C.P. NO.159 OF 2021.**

Age and Multiplier:- So far as age of the applicant is concerned, the applicant has produced copy of her Aadhaar Card along with the claim petition, wherein the date of birth of applicant has been mentioned as 03/06/1964 and accident was occurred on 29/03/2021, which shows that applicant was aged 57 years at the relevant time of accident. Thus, considering the age of the applicant as 57 years at the relevant time of accident, multiplier of '9' is

applicable to the case of applicant 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".

26. **Income**:- So far as source of income of the applicant, the applicant has produced her Examination In Chief on affidavit at Exh.40 and submitted that she was earning Rs.8,000/- per month at the relevant time of accident. Learned Advocate for opponent No.5 has cross-examined the applicant, wherein she has admitted that she has not produced any document showing her age at the relevant time of accident. Learned Advocate for opponent No.3 has also cross-examined the applicant, wherein she has admitted that she has not produced injury certificate of Medistar Hospital. It has been further admitted that due to simple fracture injury, operation was not performed in Medistar Hospital as well as in the Hospital at Vijapur. Thus, applicant failed to prove her source of income. It is also cardinal principle of law that when there is no proof of income of victim of the motor accident, his/her monthly income can be assessed on the basis of minimum wage prevailing at the relevant time of accident. Since, the applicant failed to prove her monthly income, and therefore, considering the rate of minimum wage prevailing at the relevant time of accident, the income of

Rs.8,424/- is required to be considered as monthly income of the applicant.

27. The applicant has produced her Disability Certificate vide Exh.108, wherein the Doctor has assessed permanent disability of as 17% of the body as a whole, but as per the endorsement made thereon with consent of other side to the effect that the disability may be considered as 13% of the body as a whole, and hence, disability is considered as **13%** of the body as a whole.
28. As discussed above, considering the age of the applicant as 57 years, monthly income of Rs.8,424/-, permanent disability 13% and multiplier of 9, the applicant is entitled towards future loss of income of **Rs.1,18,260/-** [Rs.8,424 X 13% = Rs.1,095/- X 9 = Rs.9,855 X 12 months = Rs.1,18,260/-].
29. Looking to the injuries and period of recovery, the applicant is entitled to get compensation under the head of actual loss for 1 month, which comes to **Rs.8,424/-**, which is awarded to the applicant under the head of actual loss of income.
30. Looking to the nature of injuries, the applicant had suffered pain, shock and suffering, hence in my opinion, applicant is entitled **Rs.5,000/-** towards pain, shock and suffering.
31. Considering the disability and treatment as an indoor patient for some days, in my opinion, applicant is entitled

Rs.10,000/- towards special diet charge and attendant charges.

32. The The applicant has also produced Medical Bills vide Exh.109 of **Rs.37,714/-**, which is awarded to the applicant under the head of Medical Expenses.
33. Therefore, the applicant is entitled for various amount of compensation as follows:-

Amount	Head
Rs.1,18,260/-	Towards future loss of income.
Rs.8,424/-	Towards actual loss of income
Rs.5,000/-	Towards pain, shock and suffering
Rs.10,000/-	Towards S.A.T. charges.
Rs.37,714/-	Towards medical expenses.
Rs.1,79,398/-	Total compensation under all heads.

Thus, applicant is entitled to get compensation of **Rs.1,79,398/- (Rupees One Lakh Seventy Nine Thousand Three Hundred Ninety Eight only)** under all heads.

34. **M.A.C.P. NO.160 OF 2021.**

Age and Multiplier:- So far as age of the applicant is concerned, the applicant has produced copy of his Aadhaar Card along with the claim petition, wherein the date of birth of applicant has been mentioned as 08/09/2004 and accident was occurred on 29/03/2021, which shows that applicant was minor 17 years at the relevant time of

accident. So far as the quantum of compensation in the case of disability of minor is concerned, in case of **Mallikarjun v. Divisional Manager, National Insurance Company Ltd. & Anr., reported in 2013 ACJ 2445**, the Hon'ble Supreme Court has dealt with the question of assessment of the compensation in the case of children suffering disability on account of a vehicular accident. In Para-8 & 12, the Hon'ble Supreme Court has observed as under:

"For a child, the best part of his life is yet to come. While considering the claim by a victim child, it would be unfair and improper to follow the structured formula as per the Second Schedule to the Motor Vehicles Act for reasons more than one. The main stress in the formula is on pecuniary damages. For children there is no income. The only indication in the Second Schedule for non-earning persons is to take the notional income as Rs.15,000/- per year. A child cannot be equated to such a non-earning person. Therefore, the compensation is to be worked out under the non-pecuniary heads in addition to the actual amounts incurred for treatment done and/or to be done, transportation, assistance of attendant, etc. The main elements of damage in the case of child victims are the pain, shock, frustration, deprivation of ordinary pleasures and enjoyment associated with healthy and mobile limbs. The compensation awarded should enable the child to acquire something or to develop a lifestyle which will offset to some extent the inconvenience or discomfort arising out of the disability. Appropriate compensation for disability should take care of all the non-pecuniary damages. In other words, apart from this head, there shall only be the claim for the actual expenditure for treatment, attendant, transportation, etc.

Though it is difficult to have an accurate assessment of the compensation in the case of children suffering disability on account of a motor vehicle accident, having regard to the relevant factors, precedents and the approach of various High Courts, we are of the view that the appropriate compensation on all other heads in addition to the actual expenditure for treatment, attendant, etc., should be, if the disability is above 10% and upto 30% to the whole body, Rs.3 lakhs; upto 60%, Rs.4 lakhs; upto 90%, Rs.5 lakhs and above 90%, it should be Rs.6 lakhs. For permanent disability up to 10%, it should be Re.1 lakh, unless there are exceptional circumstances to take different yardstick. "

35. In the present case, the applicant has given his deposition at Exh.45 wherein he has stated the he had sustained fracture and serious head injuries and thereby incurred huge medical expenses. Learned Advocate for opponent No.5 has cross-examined the applicant, wherein he has admitted that he has not produced any document showing his source of income. It has been further admitted that he was studied at the relevant time of accident. Learned Advocate for opponent No.3 has cross-examined the applicant, wherein he has admitted that applicant was first take to Medistar Hospital, Himmatnagar and he was discharge from the hospital on the next day. Moreover, applicant has also produced MLC Certificate vide Exh.95 from which it transpires that claimant has sustained injuries in the accident. The applicant has produced Disability Certificate at Exh.99, wherein the Doctor has

assessed permanent disability of face and nose as 12%, but as per the endorsement made thereon with consent of other side to the effect that the disability may be considered as 5% of the body as a whole, and hence, disability is considered as 5% of the body as a whole.

Considering the settled principles laid down by the Hon'ble Supreme Court in case of Mallikarjun (supra), if the permanent disability is up to 10%, it should be Re.1 lakh. In the present case, this Tribunal has already held that injuries sustained by minor claimant has resulted in permanent disablement body as a whole to the extent of 5%. Therefore, considering the injuries and the percentage of disability suffered by the claimant at 5%, it would be just & proper, if an amount of **Rs.1,00,000/-** is awarded to claimant. Moreover, claimant is also entitled to **Rs.5,000/-** for pain and suffering, **Rs.5,000/-** for rich diet, transportation and attendance expenses. The applicant has produced Medical bills vide Exh.96 to 98 of **Rs.18,150/-**, which is awarded to the applicant towards medical expenses. Thus, applicant is entitled to get compensation of **Rs.1,28,150/- (Rupees One Lakh Twenty Eight Thousand One Hundred Fifty only)** under all heads.

36. **Interest:**~

In the present claim petitions, the applicants have claimed interest with cost of petition. However, in view of the

reported judgment of the Hon'ble Apex Court in the case of *Savitha Vs. Cholamandalam MS General Insurance Co. Ltd., & Ors., reported in 2020 ACJ 2157*, wherein the Hon'ble Apex Court has held that, the claimant is entitled to get interest at the rate of 6% per annum, but but looking to the peculiar circumstances, the claimant would be entitled to get interest at the rate of 7% on the amount of compensation from the date of filing of the claim petitions till its realization. Hence, I award interest at the rate of 7% p.a. on the amount of compensation accordingly.

37. **Liability:**

So far as the liability is concerned, as discussed above in Issue No.1 that accident took place because of negligence on the part of drivers of both the vehicles is to be attributed to the extent as contributory negligence and negligence on the part of driver of Car No.GJ-2-CP-2021 i.e. applicant of MACP No.158 of 2021 is held at 50% and negligence on the part of driver of the Creta Car bearing registration No.GJ-4-DA-8018 is held at 50% and applicants have produced copy of Insurance Policy of Car No.GJ-04-DA-8018 vide Exh.51, which was in force for the period from 11/07/2019 to 10/07/2022 and accident was occurred on 29/03/2021, which shows that the insurance policy of vehicle Car No.GJ-04-DA-8018 was in force at the relevant time of accident and the same was insured by the

opponent No.2 with the opponent No.3. The applicants have also produced copy of insurance policy of vehicle car No.GJ-2-CP-4677 vide Exh.53, which was in force for the period from 18/10/2020 to 17/10/2021 and accident was occurred on 29/03/2021. Thus, insurance policy of vehicle car No.GJ-2-CP-4677 was in force at the relevant time of accident and the same was insured with opponent No.5. Thus, the opponent Nos.1 to 3 driver, owner and insurance company of vehicle Car No.GJ-04-DA-8018 respectively all are held liable to pay 50% amount of compensation jointly and severally. As discussed in Issue No.1 that applicants have violated the terms and conditions of insurance policy of vehicle Car No.GJ-02-CP-4677 because the applicant of MACP No.158 of 2021 was driving the said car and was having learner's license at the relevant time of accident and no any other person having permanent valid and effective driving license sitting besides the applicant and thereby breached the terms and conditions of insurance policy. It is, however, made it clear that, when there is a violation of terms and conditions of the policy, insurance company is held to be not liable, but insurance company has to pay the awarded compensation and recover the same from the insured by initiating the proceedings before the executing Court to protect and safeguard the interests of insurance company. Even if there is any violation of terms and conditions of the policy, the

Insurance company is under an obligation to satisfy the claim of third parties; since the liability of the Insurance Company during subsistence of the liability under the policy is statutory in nature and at best, the Insurance Company has to satisfy the compensation and recover the same from the insured.

Thus, keeping in view the peculiar facts and circumstances of this case, this Tribunal is of the considered view that the principle of “pay and recover” should be directed to be invoked in the present case. However, at the same time looking to the facts and circumstances of the case, it would be proper if insurance company of vehicle Car No.GJ-02-CP-4677 – opponent No.5 is ordered to pay the amount of compensation at the first instance with a liberty to recover the same from the legal heirs of owner of the Car No.GJ-02-C-4677. Therefore, opponent No.5 shall pay remaining 50% amount of compensation to the applicants of MACP No.157 of 2021, MACP No.159 of 2021 and MACP No.160 of 2021 at first instance with a liberty to recover the same from the owner / legal heirs/representative of the vehicle car No.GJ-02-CP-4677. So far as amount of compensation awarded to the applicant of MACP No.158 of 2021 is concerned, as discussed above that the applicant himself has contributed in the accident and negligence of applicant is held 50%, and therefore, opponent Nos.1 to 3 driver, owner and insurance company of vehicle Car

No.GJ-04-DA-8018 respectively all are held liable to pay amount of compensation jointly and severally to the applicant and opponent No.5 is hereby exonerated from the liability to pay compensation to the applicant of MACP No.158 of 2021.

38. In view of the aforesaid discussion and considering the reasons thereof the Issue Nos.1 & 2 are replied accordingly and for Issue No.3, the following order is passed:

ORDER

(M.A.C.P. NO.157 OF 2021)

- Present claim petition is hereby partly allowed.
- The applicant is entitled to get compensation of **Rs.36,54,700/- (Rupees Thirty Six Lakh Fifty Four Thousand Seven Hundred only)** from the opponents. Out of total awarded amount of compensation as above, 50% shall be paid by the opponent Nos.1 to 3 jointly and severally and remaining 50% shall be paid by the opponent No.5 at first instance with a liberty to recover the same from the owner / legal heirs/representative of the vehicle car No.GJ-02-CP-4677.
- The applicant is hereby entitled to recover the above compensation amount from the opponents with proportionate cost and with simple interest

there on @ 7% per annum from the date application till its realization, along with cost of litigation.

- The opponents are directed to deposit the awarded amount with cost and interest as per the directions given by Hon'ble the Apex Court in Writ Petition (C) No.534 of 2020 in the case of *Bajaj Allianz General Insurance Company Ltd. V/s. Union of India and Ors.*
- The opponents are hereby ordered and directed, by this Tribunal, to deposit the said amount within one month from the date of this award.
- Interim amount, if any, paid to the claimant/s be adjusted at the time of final disbursement. The deficit court fees, if any, be deducted from the awarded amount.
- That, out of total awarded amount of compensation awarded to the applicant, 70% amount is to be kept in fixed deposit in any nationalized bank or in a post office for a period of five years with a direction to the Bank or Post Office not to grant any loan or advance on the said F.D.R. without prior permission of this Tribunal. However, claimant/s shall be at liberty to withdraw the periodical interest on the said F.D.R. as per rules of the Bank or Post Office, and

the remaining 30% amount shall be paid to the claimant/s by A/c. payee cheque, after due verification.

- Award be drawn accordingly.

(M.A.C.P. NO.158 OF 2021)

- Present claim petition is hereby partly allowed.
- The applicant is entitled to get compensation of **Rs.6,40,585/- (Rupees Six Lakh Forty Thousand Five Hundred Eighty Five only)** from the opponent Nos.1 to 3 jointly and severally. Opponent No.5 is hereby exonerated from the liability to pay compensation to the applicant.
- The applicant is hereby entitled to recover the above compensation amount from the opponents with proportionate cost and with simple interest there on @ 7% per annum from the date application till its realization, along with cost of litigation.
- The opponents are directed to deposit the awarded amount with cost and interest as per the directions given by Hon'ble the Apex Court in Writ Petition (C) No.534 of 2020 in the case of *Bajaj Allianz General Insurance Company Ltd. V/s. Union of India and Ors.*

- The opponents are hereby ordered and directed, by this Tribunal, to deposit the said amount within one month from the date of this award.
- Interim amount, if any, paid to the claimant/s be adjusted at the time of final disbursement. The deficit court fees, if any, be deducted from the awarded amount.
- That, out of total awarded amount of compensation awarded to the applicant, 70% amount is to be kept in fixed deposit in any nationalized bank or in a post office for a period of five years with a direction to the Bank or Post Office not to grant any loan or advance on the said F.D.R. without prior permission of this Tribunal. However, claimant/s shall be at liberty to withdraw the periodical interest on the said F.D.R. as per rules of the Bank or Post Office, and the remaining 30% amount shall be paid to the claimant/s by A/c. payee cheque, after due verification.
- Award be drawn accordingly.

(M.A.C.P. NO.159 OF 2021)

- Present claim petition is hereby partly allowed.
- The applicant is entitled to get compensation of **Rs.1,79,398/- (Rupees One Lakh Seventy Nine**

Thousand Three Hundred Ninety Eight only)

from the opponents. Out of total awarded amount of compensation as above, 50% shall be paid by the opponent Nos.1 to 3 jointly and severally and remaining 50% shall be paid by the opponent No.5 at first instance with a liberty to recover the same from the owner / legal heirs/representative of the vehicle car No.GJ-02-CP-4677.

- The applicant is hereby entitled to recover the above compensation amount from the opponents with proportionate cost and with simple interest there on @ 7% per annum from the date application till its realization, along with cost of litigation.
- The opponents are directed to deposit the awarded amount with cost and interest as per the directions given by Hon'ble the Apex Court in Writ Petition (C) No.534 of 2020 in the case of *Bajaj Allianz General Insurance Company Ltd. V/s. Union of India and Ors.*
- The opponents are hereby ordered and directed, by this Tribunal, to deposit the said amount within one month from the date of this award.
- Interim amount, if any, paid to the claimant/s be adjusted at the time of final disbursement. The

deficit court fees, if any, be deducted from the awarded amount.

- That, out of total awarded amount of compensation awarded to the applicant, 70% amount is to be kept in fixed deposit in any nationalized bank or in a post office for a period of five years with a direction to the Bank or Post Office not to grant any loan or advance on the said F.D.R. without prior permission of this Tribunal. However, claimant/s shall be at liberty to withdraw the periodical interest on the said F.D.R. as per rules of the Bank or Post Office, and the remaining 30% amount shall be paid to the claimant/s by A/c. payee cheque, after due verification.
- Award be drawn accordingly.

(M.A.C.P. NO.160 OF 2021)

- Present claim petition is hereby partly allowed.
- The applicant is entitled to get compensation of **Rs.1,28,150/- (Rupees One Lakh Twenty Eight Thousand One Hundred Fifty only)** from the opponents. Out of total awarded amount of compensation as above, 50% shall be paid by the opponent Nos.1 to 3 jointly and severally and remaining 50% shall be paid by the opponent

No.5 at first instance with a liberty to recover the same from the owner / legal heirs/representative of the vehicle car No.GJ-02-CP-4677.

- The applicant is hereby entitled to recover the above compensation amount from the opponents with proportionate cost and with simple interest there on @ 7% per annum from the date application till its realization, along with cost of litigation.
- The opponents are directed to deposit the awarded amount with cost and interest as per the directions given by Hon'ble the Apex Court in Writ Petition (C) No.534 of 2020 in the case of *Bajaj Allianz General Insurance Company Ltd. V/s. Union of India and Ors.*
- The opponents are hereby ordered and directed, by this Tribunal, to deposit the said amount within one month from the date of this award.
- Interim amount, if any, paid to the claimant/s be adjusted at the time of final disbursement. The deficit court fees, if any, be deducted from the awarded amount.
- That, out of total awarded amount of compensation awarded to the applicant, 70% amount is to be kept in fixed deposit in any nationalized bank or in a post office for a period

of five years with a direction to the Bank or Post Office not to grant any loan or advance on the said F.D.R. without prior permission of this Tribunal. However, claimant/s shall be at liberty to withdraw the periodical interest on the said F.D.R. as per rules of the Bank or Post Office, and the remaining 30% amount shall be paid to the claimant/s by A/c. payee cheque, after due verification.

- Award be drawn accordingly.
- Copy of judgment be placed in MACP No.158 of 2021, MACP No.159 of 2021 & MACP No.160 of 2021.

Signed and pronounced in open Court on this 13th day of March, 2026.

Date : 13.03.2026
Place: Mahesana

**[AMBRISH LALJIBHAI VYAS]
MOTOR ACCIDENT CLAIMS
TRIBUNAL (MAIN) MAHESANA
UIC NO. GJ00508**