GJMH010024522024

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GJMH01-002452-2024

M.A.C.P.No.158/2024	
Filing Date :	03.07.2024
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Decided on:	31.07.2026
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BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL, (MAIN) AT MAHESANA, DISTRICT MAHESANA.

JUDGEMENT PASSED IN

MOTOR ACCIDENT CLAIM PETITION NO.158 OF 2024

Presided Over by Shri A.L.Vyas

Exhibit No. 68

APPLICANT/PETITIONER :

VICKY MAFATLAL PANCHAL,
Age about 32 years, Occupation : Business,
Aadhar Card No. : 7836 8609 9152,
Pan Card No. : BNPP0192C,
Savings A/c. No. : 32525751261,
IFSC Code No. : SBIN0013760,
Residing at B/104, Aryan Ureka Sayona Shikhar,
Vande Matram Road, Gota, Ahmedabad.

VERSUS

1 : OWNER OF VEHICLE NO.GJ-23-AT-7884
SHUBHAMPURI RAMESHPURI PURI
Age adult, Occupation : Transport,
Residing at Jagnath Mahadev, Near Khetivadi, Anand-388001.

{2 : INSURANCE COMPANY OF VEHICLE NO. GJ-23-AT-7884,

AS PER ORDER BELOW EXH.13, THE OPPONENT NO.2 DELTED.

AS PER ORDER BELOW EXH.18 FOLLOWING PARTIES JOINED ON RECORD.

3 : DRIVER/OWNER OF VEHICLE CAR NO. GJ-01-WQ-3564,
HEIRS OF SHAILESHBHAI MANUBHAI PANCHAL...
SANDHYABEN SHAILESHBHAI PANCHAL,
Residing at 1/A, VT Park -2 Near Ramapir Temple, Chandlodiya, Ahmedabad, Mob. No.98791 53632.

4 : AS PER INSURANCE POLICY OF VEHICLE NO. GJ-01-WQ-3564 : MRS. SUVENDU GHOSH S/O. RANJIT KR GHOSH - OWNER,
Akshi Mother Teresha Sarany Siliguri, Darjeeling, Jalpaiguri, West Bengal-734004, Mob. No. 98320 49998.

5 : INSURANCE COMPANY OF VEHICLE NO. GJ-01-WQ-3564
LIBERTY GENERAL INSURANCE COMPANY LTD.,
Office : At 603 to 606, BSC Complex, Stadium Circle, Chimanlal Girdhar Road, Ahmedabad.

SUBJECT : Claim petition under Section 166 of the Motor Vehicle Act, 1988 claimed compensation of Rs.20,00,000/- from opponents.

M.A.C.T (MAIN),
MAHESANA.

APPEARANCE :

Learned Advocate Mr. P.M. Rangwala for the Applicant.
Opponent No.2 **deleted.**

Learned Advocate Mr. V.A. Parikh for opponent No.1

Learned Advocate Mr. N.R. Bhavsar for Opponent No.5.

Though the notice/s served to Opponent Nos.3 & 4, remained absent.

JUDGMENT

1. The claimant has claimed compensation of Rs.20,00,000/- (Rupees Twenty Lakh Only) on account of accidental injury caused to claimant in a vehicular accident, which occurred on 19.05.2024, near Nani Dau Patiya, Mahesana.

2. The factual matrix leading to the present claim are as under :

2.1 It is the case of the claimant that,16/05/2024, at around 06:00 a.m., the applicant/claimant, along with his friend Shaileshbhai Manubhai Panchal, left for Ahmedabad sitting in Car bearing registration No. GJ.01.WQ.3564. The said car was being driven by his friend Shaileshbhai Manubhai Panchal at the right side of the road at a slow speed. It is averred that when they reached near Nanidau Patiya, Mahesana Taluka Police Station, a vehicle bearing Registration No.GJ.23.AT.7884 was going ahead of them. The driver of the said vehicle suddenly applied brakes without giving any sign of hand or side light indicator. Consequently, the car in which the claimant was traveling collided into the rear side of the vehicle Eicher truck/container. In the said accident, the car driver Shaileshbhai Panchal sustained fatal injuries and passed away, while the applicant/claimant sustained grievous and severe bodily injuries. It is further averred that the accident occurred solely due to the rash, negligent, and careless driving on the part of the driver of vehicle No. GJ.23.AT.7884, owned by opponent No. 1 and insured with opponent No.2. An FIR in respect of the said accident was registered at Mehsana Taluka Police Station vide I-CR No. 77/2024 and a charge sheet was subsequently filed against the driver of the offending vehicle.

2.2 It is further averred that at the time of the accident, the applicant/claimant, named Vicky Panchal was aged 32 years old healthy young man, having a date of birth of 14/11/2002. He was residing at Ahmedabad and engaged in the business of taking furniture contracts, earning an annual income of Rs. 6,00,000/-. It is further averred that due to the accident, the claimant sustained severe injuries, including swelling on the face, fracture on the nose, bleeding, right side rib fractures, fracture of the left thigh bone (femur), injury to the spinal cord, and multiple serious injuries across the body. He was rendered unconscious and was initially rushed by 108 ambulance to Mehsana Civil Hospital, and thereafter shifted for further specialized treatment to a private multi-speciality hospital in Ahmedabad as an indoor patient, where surgeries were performed. It is further averred that the claimant was advised strict bed rest for 12 months and has suffered permanent partial disability. Due to frequent dizziness, severe pain, and physical limitations, he requires constant assistance from an attendant and is unable to engage in his daily routine or pursue his furniture contract business as before. It is further averred that the claimant has incurred heavy medical expenses, including doctor fees of Rs. 7,00,000/-, medicine expenses of Rs. 5,00,000/-, hospital nursing/care expenses of Rs. 2,00,000/-, attendant charges of Rs. 1,00,000/-, transportation charges of Rs. 2,50,000/-, and special diet expenses of Rs. 2,50,000/-.

Lastly, it is stated that the accident occurred due to the rash and negligent driving on the part of the driver of vehicle No.GJ.23.AT.7884. Therefore, the opponents are jointly and severally liable to pay a total compensation of Rs. 20,00,000/- to the claimant, along with interest at the rate of 18% per annum from the date of filing of the claim petition till its realization, along with costs.

3. The summons of the claim petition were served upon the opponents. As per order below Exh.13, opponent No.2 deleted. The opponent Nos.3 & 4 chosen not to appear before the Tribunal. The opponent Nos.1 & 5 appeared through their learned Advocates.

3.1 The learned Advocate Mr. Parikh for opponent No.1 has filed written statement vide Exh.20, in which it is contended that claimant has to prove contents regarding annual income Rs.6,00,000/- by producing documentary evidence. It is contended that the contents of para-6 regarding injury should be proved as per law. It is submitted that the true facts are that, the opponent No. 1, engaged in the transport business, states that on 19-04-2024, at around 4:00 a.m. , their loaded truck NO.GJ.23.AT.7884 was legally parked off the 6-lane road near Nanidau Patiya while the driver was repairing the steering, when vehicle GJ.01.WQ.3564, driven by the applicant’s friend namely Shaileshbhai Panchal at a speed of 80–100 km/h, dashed into the rear of the parked truck. The applicant and his injured friend were taken to General Hospital, Mehsana for treatment, where medical records and the 108 ambulance report confirm that the applicant's vehicle rammed into a stationary vehicle from behind. Photos taken at the site further confirm the truck was parked safely on the extreme side of the road. Consequently, the opposite party contends that they and their truck bear no legal liability, the applicant falsely made them a party in a huge monetary claim, and the applicant's claim deserves to be rejected, particularly as the applicant failed to join their own vehicle or its insurance company as a party despite being at fault.

4. After filing of the written statement, the learned Advocate for the opponent No.5 has filed permission vide Exh.38 to contest claim petition under Section-170 of the Motor Vehicle Act. The Tribunal has passed an order below application vide Exh.38 of opponent No.5 and allowed to contest the claim petition.

5. In support of the present claim petition, the applicant has produced the following oral as well as documentary evidence.

5.1 Evidence from the applicant / claimant side.

ORAL EVIDENCE:

Sr. No.	Description of Oral Evidence	Exh.
1.	Deposition of applicant / claimant namely Vicky Mafatlal Panchal, under Order-XVIII, Rule-4(1) of C.P.C.	36

DOCUMENTARY EVIDENCE :

Sr. No.	Description of Documentary Evidence	Exhs.
1.	Original Photographs of collided vehicles.	39
2.	True copy of Injury certificate of applicant.	40
3.	Copy of complaint.	41
4.	Copy of Pananchnama of place of an offence.	42
5.	Copy of R.C. Book of Eicher Truck No. GJ-23-AT-7884.	43
6.	Copy of Driving Licence of driver of Eicher Truck No. GJ-23-AT-7884.	44
7.	Copy of R.C. Book of vehcile No. GJ.1.WQ.3564.	45
8.	Medical Bills of Trisha Multispecialist Hospital,Ahmedabad.	46
9.	Disability certificate issued by Dr. Mahesh Khandelwal, M.S Ortho, Mahesana.	49
10.	Original Discharge Card.	50
11.	Letter of Mediclaim issued by H.D.F.C.	51

	ERGO General Insurance Co. Ltd.,	
12.	Income Tax Return Year 2022-23.	53
13.	Income Tax Return Year 2023-24.	54
14.	Income Tax Return Year 2021-22	55

6. After adducing and producing evidence from claimant side, the learned Advocate for applicant / claimant has filed closing pursis vide Exh.56 and declared that he has no furthermore evidence produce in the matter. Thenafter matter kept for evidence of opponents. The learned Advocate for opponent No.1 has produced following evidence :

6.1 Evidence from the opponent No.1 :

ORAL EVIDENCE:

Sr. No.	Description of Oral Evidence	Exh.
1.	Examination-in-chief of opponent No.1namely Shubhampuri Rameshpur, under Order-XI, Rule-4 of C.P.C.	60

Thenafter, the learned Advocate for opponent No.1 has filed closing pursis vide Exh.61. The learned Advocate for opponent No.5 has asked for permission to produce written statement, the permission granted accordingly.

7. The learned Advocate Mr. N.R. Bhavsar for opponent No.5 has filed written statement vide Exh.63, in which it is contended that the opponent No.5 has issued Bundled policy to owner of car No. GJ-1-WQ-3564 and on the date of accident it is ‘Liability / Act Only Policy’, which does not cover the risk of the occupant carried therein. Therefore as per the terms and conditions of the policy, the risk of the occupamnt of the said vehicle is not covered and hence no liability can be saddled on the opponent No.5. For that referring the following Judgments of Hon’ble Apex Court :

- Tilak Singh v/s. United India Insurance Co. Ltd., reported in 2006 ACJ PAGE 1441.

- The Supreme Court of India , Civil Appeal NO. 3634 of 2008, reported in ACC 2008 page No.849.

- Gujarat High Court : The New India Assuance Co. Ltd V/s. Parthivkumar Rasikbhai Parmar; First Appeal No.1223 of 2010, dated 16.9.2013.

It is further contended that unless the cpplicant proves that the compliance of S.64(VB) of Insurance Act, opponent No.5 is not liable unless the same is proved. It is further contended that at the time of accident, the driver of vehicle car No. GJ-1-WQ-3564 was not holding a valid and effective driving licence, hence opponent No.5 is not liable for the claim or any part thereof. It is further contended that unless there is statutory violaation for compliance of documents i.e. driving licence, registarion documents etc, opponent No.5 willnot stand in law to indemnify the awarded amount of compensation. It is further contended that the claimant should prove the contents of para Nos.1 to 6 regarding age, income sustained fracture injury by producing and adducing cogent and reliable evidence, failing which the claim deserves to be dismissed with cost. It is further contended that the contents of para Nos.7 to 9 of the claim petition are not known and factum of the involvement of the vehicle be proved by leading cogent evidence. It is further contended that the contents of para-10 regarding occurrence of accident, negligence of driver of vehicle Eicher No. GJ-23-AT-7884, factum of accident and involvement of vehicle No. GJ-1-WQ-3564 by leading cogent evidence. It is further contended that the contents of para-11 in respect of age, income, fracture injury, treatment taken from the hospital and asked compensation under various heads are not true, the applicant/claimant must prove the said averments by leading cogent evidence. Considering the contents of above written statement, the claim petition of the claimant be dismissed with cost.

7.1 After adducing evidence and written statement by the parties, this Tribunal kept the matter for final hearing and heard the oral arguments of the learned Advocates for the parties at length. Mr. Rangwala learned Advocate for the applicant has submitted that injured Vicky Mafatlal Panchal i.e. claimant and Shaileshbhai Manubhai Panchal going in the car No. GJ-01-WQ-3564 and the car dashed behind Eicher No. GJ-23-AT-7884, due to press the break by Eicher and suddenly stopped, the rear coming vehicle rammed into the ahead stationary Eicher. The charge-sheet filed against the driver of Eicher No. GJ-23-AT-7884. The claimant is the third person, therefore, the claimant is entitled to get the compensation from the parties of vehicles Eicher or car. This is the case of composite negligency, hence it is requested to allow the compensation accordingly.

7.2 Per contra, learned Advocate Mr. V.A. Parikh for opponent No.1 has submitted that the opponent No.1 is not responsible for the accident, the car No. GJ-01-WQ-3564 dashed behind the Eicher NO. GJ-23-AT-7884 therefore the opponent No.1 i.e. driver & owner of the Eicher are not responsible and not indemnify for the compensation. The learned Advocate Mr. Parikh relying upon the judgment passed in Civil Appeal No.10145 of 2016 Nishan Singh & Ors. Versus Oriental Insurance Company Ltd. Mr. Parikh has submitted that when the opponent No.1 and 2 have no negligency and car driver is fully negligent, therefore, he requested to exonerate the opponent Nos.1 & 2.

7.3 The learned Advocate Mr. Bhavsar for opponent No.5-Liberty General Insurance Company and has submitted that policy of car No.GJ-1-WQ-3564 is the 'ACT ONLY POLICY' injured-applicant is occupant, therefore the insurance company is not liable to pay the compensation because 'occupant' is not covered under the policy. Further, the chargesheet is filed against the driver of Eicher No. GJ-23-AT-7884. The present case is filed under the purview of composite negligency therefore he requested to exonerate the opponent No.5-Insurance Company from it's liability. In support of the arguments, the learned Advocate relied upon the following judgments :

1. R/First Appeal No.4971 of 1999 with R/First Appeal No.4973 of 1999, Gujarat High Court, New India Assurance Co. Ltd., V/s. Harsukhbhai Savjibhai Hirpara Through Guardian & 4 Others.

2. Special Leave Appeal NO.3762/2019, Supreme Court, in First Appeal NO.384/2016, United India Insurance Co. Ltd., V/s. Hemendrasinh Mansinh Jadav & Ors.
3. First Appeal No.2209 to 2212 of 2019, Gujarat High Court, Oriental Insurance Co. Ltd. V/s. Jamnaben Parshottam Patel & 7 Others.
4. R/First Appeal No.3735/2009 with First Appeal No.786/2009, Gujarat High Court, United India Insurance Co. Ltd. V/s. Bakulkumar Prabhudas Patel & 5 Ors.

8. For determination of the claim petition, the following issues were framed vide Exh.31, dated 24/11/2025 :

ISSUES

1. Whether claimant proves that the injured sustained injuries on account of rashness and negligence on the part of the driver / s of the vehicle / s involved in the accident ?
2. What amount, if the claimant is entitled to, by way of compensation and from which of the opponent ?
3. What order and award ?

REASONS

9. Issue No.1:-

It is well settled principle by catena of judicial pronouncement that while deciding the point of negligence, it has to be born in mind that the negligence is required to be proved in claim petition u/s 166 of the Act only on the touchstone of the preponderance of probability and not beyond doubt. Above referred ratio is laid down by Hon'ble

Apex Court in the case of ***Anita Sharma v/s. The New India Assurance Co. Ltd. & Anr.***–2021-0-AIR (SC) 302.

9.1 To substantiate the claim, the applicant has filed his examination-in-chief on affidavit at Exh.36 and has submitted that impugned the accident occurred due to gross negligence on the part of driver-opponent No.1 of vehicle Eicher Truck No. GJ-23-AT-7884 involved in the accident. The learned Advocate Mr. V.A. Parikh for opponent No.1 has cross-examined the applicant. The witness admitted that at the time of the accident, he was traveling in car No. GJ-01-WQ-3564 on a six-lane road and was asleep when the incident took place. He admitted that the complaint (FIR) was given by his father and he merely signed it after reading, and it does not mention that the truck driver suddenly applied brakes without giving any hand or light signal. Looking at the three court-submitted photographs (Ex. 39), he admitted that their car appears to have collided with the rear of a truck parked on the service road, with no skid marks visible on the main road. He further admitted that during his primary medical treatment(Exh.40) at General Hospital, Mehsana, on 16-05-2024, the history recorded before the doctor states that their four-wheeler entered into the back of another vehicle standing on the road near Nani Dau. However, he denied that truck No. GJ-23-KT-7884 was parked on the side due to brake and steering failure or that their car collided into it at a speed of 60 to

100 km/h, and he denied filing a false complaint against the truck driver to claim fake compensation.

9.2 The learned Proxy Advocate Mr. M. N. Bhavsar for Learned Advocate Mr. N. R. Bhavsar for Respondent No. 5 has conducted cross-examination. In the cross-examination the witness admitted that the car he was traveling in belonged to his relative, Shaileshbhai, who was driving at the time. He admitted that the details provided in the accident complaint are true, that they were sitting in the car, and that the complaint was given against the driver of the truck, which is connected with the insurance company joined as a party. He admitted that although he claims to work as a furniture contractor, he has no written proof of this work, no records of income or expenses, and has submitted no tax returns. He also admitted having no written documentary proof for any medical treatment taken outside of Trisha Hospital, nor any new X-ray taken when obtaining a bone certificate from Dr. Khandelwal, though he expressed willingness to produce post-accident income tax returns.

9.3 The learned Advocate Mr. V.A. Parikh has submitted written examination-in-chief on oath of witness-Shubhampuri Rameshpuri vide Exh.60. In his examination-in-chief, he deposed that, he operates a transport business and is the owner of truck No. GJ.23.AT.7884. He submits that on the night of 19/05/2024, while transporting goods from Siddhpur, the truck had mechanical failures with its brakes, steering, and clutch plate around 4:00 a.m. prompting the driver to park it safely on the extreme side of the parking lane on a six-lane road near Nanidau Patiya. He deposed that the car No.GJ-01-WQ-3564 driven by the applicant's friend by rash and negligent manner and at a high speed of 80 to 100 km/h, causing it to crash directly into the rear center of the stationary truck. In support his defense, he refers to the emergency medical history recorded at General Hospital, Mahesana (Exh.40) by the 108 ambulance doctor, where the applicant admitted that his vehicle crashed into a stationary vehicle parked on the road. The witness further deposed that he visited the accident site the next day and took three photographs (Exh.39) proving the truck was parked in the parking lane, and he produced repair bills dated 19/05/2024 and 21/05/2024 showing the truck became non-operational. Lastly, he deposed that, the neither opponent nor his lawful liability for the said accident, despite the facts, the claimant joined them as opponent/s parties in the claim petition and claimed compensation for huge amount. Also, claimant has not joined parties of his vehicle, hence considering above facts, claim of the claimant be dismissed.

9.4 The learned Advocate Mr. P.M. Rangwala for applicant has cross-examined the said witness, in his cross-examination, he admitted that he has not seen the incident of accident. He can't say by whose fault, the accident occurred ? He has admitted that his vehicle was not insured.

He has admitted that the chargesheet of the accident-offence filed against his driver-named Ashokkumar.

9.5 The learned Advocate Mr. Bhavsar for opponent No.2 has cross-examined the said witness, in his cross-examination, he admitted that he did not know, who written the history before the doctor ? He admitted that photographs taken on next day. He admitted that he has not deposed in his affidavit that parking light was on and placed some indicators on road. has not seen the incident ofProxy Advocate Mr. M. N. Bhavsar for Learned Advocate Mr. N. R. Bhavsar for Respondent No. 5 has conducted cross-examination. In the cross-examination the witness admitted

Negligence :

9.6 A bare reading of the complaint (Exh.41), the factum of the case is that, the complainant namely Vicky S/o Mahetlab Laxmandas Panchal, stated in his complaint that on 19.05.2024, at around 05:30 AM, he along with his friend, Shaileshkumar Manubhai Panchal, were traveling toward Ahmedabad in their vehicle bearing registration No. GJ-01-WQ-3564, which was being driven by his friend Shaileshkumar. When they reached near Nanidau Patiya, an Eicher vehicle bearing registration No. GJ-23-AT-7884, driven at high speed, suddenly applied its brakes on the side of the road, resulted which, their vehicle rammed into the Eicher truck ahead from behind. In this accident, the complainant's friend Shaileshkumar suffered severe injuries on his nose, mouth, and ribs, resulting in his death on the spot, while the complainant also sustained injuries on his body, nose, and mouth. Thereafter, people gathered at the spot, called the 108 ambulance, and took them to the Civil Hospital, Mahesana, where the complainant's wife, Bhartiben, and brother, Jayendrakumar, arrived upon being informed. Meanwhile, the driver of the Eicher vehicle fled the spot after leaving his vehicle behind, leading the complainant to lodge a complaint against the driver of Eicher vehicle GJ-23-AT-7884 for causing the fatal accident by driving recklessly and braking abruptly.

9.7 Upon reading of Panchnama produced vide Exh.42, in which the panchas drawn the Panchnama in connection with the complaint vide 1st Cr. No.77/2024/Part A No. 11206043240357 registered at Mehsana Taluka Police Station for the offenses punishable under Sections 279, 337, 338, and 304A of the IPC and Sections 177, 184, and 187 of the M.V. Act. On 19.05.2024, between 09:15 a.m. to 10:15 a.m. the police called the panchas, who after giving their consent, proceeded to the scene of the accident located on the Unjha–Mehsana State highway near Nanidau Patiya, bus stand approximately 400 feet away towards Mehsana. At the spot, an Ashok Leyland Eicher Truck bearing registration No. GJ-23-AT-7884, loaded with tobacco goods covered under yellow and green tarpaulins, was found standing on the left side of the road, while a four-wheeler car bearing registration No. GJ-01-WQ-3564 was found rammed into its rear portion. Upon examination of the car, the front engine section, bonnet, grill, and bumper were completely smashed, the windshield was shattered, the driver-side door glass was broken, the steering wheel was bent, and blood stains were clearly visible on the front driver and passenger seats. Further physical observation revealed marks of leaked radiator water and engine oil on the road directly underneath the vehicles, though no tire drag or brake marks were found on the road surface, and no other personal belongings were seized from the spot. The boundaries of the scene were noted as an open field with electric poles to the East, the opposite lane of the highway leading towards Unjha to the West, and State Highway leading North to South, the panchas concluded their panchnama as observed by them.

9.8 Upon careful consideration of the complaint at Exh.41 and the panchnama of the place of offence at Exh.42, it appears that the accident occurred due to the contributory negligence of both the drivers, and therefore the negligence is required to be apportioned equally at 50% each. As per the complaint, on 19.05.2024 at about 05:30 a.m., the deceased Shaileshkumar was driving car bearing registration No.GJ-01-WQ-3564 towards Ahmedabad, with the complainant travelling as a passenger. When they reached near Nanidau Patiya, the Eicher truck bearing registration No.GJ-23-AT-7884, which was moving ahead of them, suddenly applied brakes on the roadside, due to which the car dashed into the rear portion of the truck. It is alleged that the truck driver was driving at high speed and applied brakes abruptly before fleeing from the place of the accident. However, the panchnama of the scene shows that the Eicher truck was found standing on the left side of the road, while the car had rammed into its rear portion with severe damage to its entire front side, including the bonnet, engine, bumper, grill, windshield and steering wheel, indicating a forceful rear-end collision. The panchnama further records that there were no tyre skid marks or brake marks on the road, though radiator water and engine oil had leaked from the damaged car. The absence of skid marks indicates that the driver of the car did not apply effective brakes before the impact, suggesting that he failed to maintain a safe speed, proper lookout, and sufficient distance from the vehicle moving ahead. At the same time, the allegation in the complaint that the truck driver suddenly applied brakes on the roadside without ensuring that it was safe to do so also indicates lack of reasonable care on his part and also, when a vehicle is in a stationary or parked condition, the driver must place parking relfectors or warning signs at the rear side, so that oncoming drivers can take necessary precautions and drive his / her vehicle safely. Further, a prudent driver is expected to avoid sudden braking unless absolutely necessary, while a following driver is equally expected to maintain sufficient distance and keep his vehicle under proper control so as to avoid colliding with the vehicle ahead. Here, one question is arose that driver of the rear coming vehicle had exercised due care, the accident could have been avoided. Therefore, considering the manner in which the accident occurred, the allegations in the complaint, and the material evidence recorded in the panchnama, it is evident that both drivers equally contributed to the occurrence of the accident. Accordingly, this Tribunal holds that the driver of the Eicher truck bearing registration No. GJ-23-AT-7884 and the driver of the car bearing registration No. GJ-01-WQ-3564 were each negligent to the extent of 50%, and the liability for the accident is apportioned equally between them. In view of the above, I decide issue No.1 in affirmative.

10. **Issue No.2 (Quantum of Compensation):**

Income :

That so far as question of compensation is concerned, the claimant has claimed applicant has claimed Rs.20,00,000/- from the opponents under various heads. The claimant has produced his examination-in-chief on affidavit at Exh.36 and stated that he was aged about 34 years and he stated that, he was engaged in the business of taking furniture contracts, earning an annual income of Rs. 6,00,000/- and he was filing an Income Tax Return. Learned Advocate for opponent No.2 has cross-examined the applicant, wherein he has admitted that he has not produced evidence in respect of doing service in ready made garment. He has deposed that he has produced income tax returns. He has deposed that he had received amount of medical bills from the Health Insurance. From the Income Tax return (Exhs.53,54 & 55), income of the injured produced a copy of Income

Tax Return Exh.54 for the year-2023-24, so considering the time of accident i.e. year 2024, hence Income Tax Return (Exh.54) taken into consideration, the gross total income of claimant-injured was of Rs.6,76,830/- less Tax paid by him Rs.12,430/- i.e. annual income of applicant is Rs.6,64,400/- (Rs.6,64,400/- / 12 = Rs.55,366.66/- (rounded Rs.55,367/- monthly income).

Age :

10.1 So far as age of the applicant is concerned, the applicant has produced copy of Aadhar Card, wherein the date of birth of applicant has shown as 15/10/1991 and accident was occurred on 19/05/2024, which shows that applicant was aged 32 years 07 months and 14 days at the time of accident, which is not objected or challenged by the opponents, and therefore, age of the applicant is considered as 33 years at the time of accident. Thus, considering the age of the deceased as 33 years (age group 31 - 35) at the time of accident, multiplier of **"16"** is applicable as per *Sarala Verma V/s. DTC* case.

Disability :

10.2 The applicant has produced Disability Certificate at Exh.49 and claimant has examined Dr. Mahesh Khandelwal, M.S. Ortho, vide Exh.49, wherein the Doctor has assessed permanent impariment of Lt. Lower limb is 28% and chest is 8% and combined as per *Kessler* permanent disability assessed 34.6% body as whole. The learned Advocate for opponent No.5 has agreed upon the disability produced vide

Exh.49 to calculate his permanent disability at 25%. The same has been accepted by the learned Advocate for the applicant. This Tribunal assessed permanent disability 25% body as whole.

Future Loss :

10.3 As per discussion made herein above, disability of the claimant assessed 25% body as a whole. The claimant annual income of claimant Rs.6,64,400/, the age of claimant is 33 years, hence multiplier of 16 is applied as per *Sarala Verma's* case. In view of above, claimant is entitled following amount under the head of loss of future income **Rs.26,57,600/-** (Rs.6,64,400/- p.a. x 25% disability = Rs.1,66,100 x 16 multiplier = Rs.26,57,600/-).

Pain, Shock & Sufferings & Special Diet, Attendance & Transportation :

10.4 The claimant has produced injury certificate vide Exh.40, in which stated that the patient was semi consicous and he suffered from one lacerated would over nose tip, patient was treated primarily and then referred to civil hospital for further treatment. Disability certificate and discharge card produced vide Exh.49 & 50 respectively. From the said certificates, it emerged that the claimant suffered multiple severe fractures across major structural sites. Also, he undergone major surgical intervention involving open reduction, internal fixation, bone grafting, nasal bone reduction and suturing under general anesthesia. The medical certificate records a malunited femure fracture limb shortening, wasting of muscles, deformity and substantial restriction of movement, which shows that claimant sufferred long term physical discomfort, altered gait and ongoing pain during the dail activities. Looking to the nature of complex fractures requiring bone grafting, multiple internal fixations, and subsequent malunion, a high protein, calcium rich and supportive medical diet. It also reflect that claimant's mobility was severely impaired during hospitalization and the post operative period. Due to major lower limb trauma, limb shortening and restricted joint movement, the claimant dependent on an attendant for daily personal hygiene, movement and care. The claimant unable to use public transport, necessitating private or specialized vehicular transportation for hspital visit. So, considering the major lower limb trauma, limb shortening and restricted joint movement, this Tribunal award Rs.25,000/- under the head of pain, shock & suffering and special diet and Rs.25,000/- under the head of attendance charges & transportation.

Actual Loss :

10.5 The claimant has claimed huge amount under the head of actual loss of income. The claimant has produced discharge card (Exh.50), wherein nowhere exact period of recovery is mentioned. Looking to the peculiar facts and fracture injury as sustained by the claimant, I am of the opinion that claimant is entitled **Rs.1,69,207/-** (i.e. 55,366.67 x 3 months and 1-2 days Rs.1,69,207/-) under the head of actual loss.

Medical Expenses :

10.6 The learned Advocate for opponent No.2 has argued that claimant has produced care health mediclaim papers and he has received medical expenses from the health care insurance, so he cannot claim the expenses of medicines, because claimant has already paid the amount of medicines. On the crucial question of law regarding whether medi claim reimbursements should be deducted from a Motor Accident Claims Tribunal (M.A.C.T.) award, this Tribunal referred the landmark judgment of the Hon'ble Supreme Court in the case of *Dolly.* It is a settled legal principle that a third-party tortfeasor or its statutory insurer cannot claim a mitigation of damages or a set-off based on an independent contractual insurance policy for which the victim paid separate private premiums. A mediclaim settlement is a personal contract and does not absolve the offending vehicle's insurer of its statutory liability to pay full indemnification for the tortious act.

10.7 Therefore, the absolute rule of law laid down in the ***Dolly Satish Gandhi*** case dictates that amounts received by a claimant under a Mediclaim or medical insurance policy are strictly NOT deductible from the compensation awarded by an M.A.C.T. The applicant is entitled to receive the full medical expenses from the Motor Accident Claims Tribunal. The medical bills produced vide Exh.46 and a copy of health insurance mediclaim produced vide Exh.51 of

Rs.3600/- and Rs.3,48,430/- total Rs.3,52,030/-, this Tribunal is allowed accordingly. Thus, the claimant/petitioner is entitled to get compensation as per the following details :

Rs.26,57,600=00	Future economic loss
Rs. 1,69,207=00	For Actual Loss of income.
Rs. 3,52,030=00	For Medical Bills & difference of health policy (at Exh.46 & Exh.51).
Rs. 25,000=00	For pain, shock and sufferings.
Rs. 25,000=00	For special diet, attendant & transportation.
Rs.32,28,837=00	Total Compensation
Rs.16,14,418=50	Less 50% Contributory negligency of driver of Car No. GJ-01-WQ-3564/opponent No.1, owner, heirs of driver – opponent No.3 and recorded owner of car opponent No.4.
Rs.16,14,418=50	50% Contributory negligency of driver of Eicher Truck No. GJ-23-AT-7884.

11. The applicant/claimant has preferred present claim petition and claimed compensation of Rs.20,00,000/-, but as discussed herein above that he is entitled to compensation of **Rs.32,28,837**/- (Rupees Thirty Two Lakhs Twenty Eight Thousand Eight Hundred Thirty Seven Only). In a case of Shaileshkumr Shantilal Gandhi Vs. Sunil Babulal Dixit and others (F.A. No.309/2002 and 310/02) order dated

26.12.2012, Hon'ble High Court of Gujarat observed in para-15 that;

> *"it is therefore, apparent that in course of a proceeding for compensation under Motor Vehicles Act even if at an appellate stage, an Appellate Court finds that the claimant is entitled to have more amount of compensation than the one claimed either in claim application or in Memorandum of Appeal against the award of compensation and if the Tribunal or Court comes to the conclusion that the just amount of compensation would be more than the amount restricted by the claimant, such fact will not stand in the way of the court in awarding just amount of compensation. However, in my opinion, in such case, court should pass direction for payment of additional amount of court fees."*

Thus, considering the law laid down by Hon'ble High Court of Gujarat, it would be just, proper and reasonable to award the amount exceeding the amount claimed by applicant and thus, applicant is awarded compensation of Rs.16,14,418=50 and Rs.16,14,418=50/- which **Rounded would be of Rs.16,14,419/-** and **Rs.16,14,419/**- respectively from respective opponents.

Liability :

12. So far the liability is concerned, as discussed above, the present claimant is sitting in the car No. GJ-01-WQ-3564 and car dashed behind the Eicher No. GJ-23-AT-7884. The claimant has given the complaint, wherein he has clearly stated that the driver of Eicher No. GJ-23-AT-7884 suddenly applied break and at that time his car No. GJ-01-WQ-3564 was coming from rear side and dashed behind the ahead going Eicher No.GJ-23-AT-7884.

12.1 On perusal of the panchnama, the front side part of the vehicle is damaged and rear side of Eicher is damaged and charge sheet filed against the driver of the Eicher No. GJ-23-AT-7884. On perusal of the insurance policy of the car No. GJ-01-WQ-3564 is 'Private Car Policy'. Considering the date of accident, it is an 'ACT ONLY POLICY'. Further it reveals from the policy, insured obtain policy from opponent No.2 which is 'Bundled Policy' and on the date of accident liability is 'Act Only Policy' which does not cover the risk of occupant and risk of the occupant of the said vehicle is not covered therefore liability cannot be seddled on opponent No.5.

12.2 Herein the present case, from perusal of the claim petition and documentary evidence, it is found that the opponent No.2-Insurance company of vehicle Eicher No. GJ-23-AT-7884 is deleted as per order below **Exh.13** and as per order below **Exh.18** joined the legal heir of deceased-Shaileshbhai Manubhai Panchal- driver of Car No.GJ-01-WQ-3564 as opponent No.3, opponent No.4 -owner as per insurance policy and opponent No.5-Insurance company of Car No. GJ-01-WQ-3564. So it is pertinent to note that as per terms and conditions, there is no liability fixed on the part of opponent No.5-Liberty General Insurance Company, hence opponent No.5-Liberty General Insurance Company is **exnoerated** from it's liablity.

12.3 As the discussions made hereinabove and this Tribunal holds that the driver of the Eicher truck bearing registration No. GJ-23-AT-7884 and the driver of the car bearing registration No. GJ-01-WQ-3564 were each negligent to the extent of 50%, and the liability for the accident is apportioned equally between them. So from the documentary evidence and submissions of the learned Advocates of the respective parties and it become clear that opponent No.1-owner of the Eicher Truck No.GJ-23-AT-7884 is liable to pay the 50% amount of compensation Rs.16,14,419/- (Rupees Sixteen Lac Fourteen Thosuand Four Hundred Nineteen Only) to the claimant. The opponent No.3-legal heir of deceased Shaileshbhai Manubhai Panchal i.e. owner/driver of the Car No. GJ-01-WQ-3564 is liable to pay the 50% amount of compensation Rs.16,14,419/- (Rupees Sixteen Lac Fourteen Thosuand Four Hundred Nineteen Only) to the claimant. As the discussion made herein above, driver of offending vehicles hold negligent for causing accident and as such, all three i.e. opponent Nos.1, 3 & 4 are liable to pay the compensation to claimant accordinly.

13. As per the discussion made herein above and the reasons given by the Tribunal, the claimant has succeeded in proving issue No.2. Hence, I decide issue No.2 is answer accordingly and for issue No.3, I pass following final order.

O R D E R

I. The present Motor Accident Claim Petition No.158 of 2024 of the applicant/claimant is allowed against the opponent Nos.1, 3 & 4.

II. Out of total awarded amount of compensation **Rs.32,28,837**, the applicant / claimant do recover 50% amount of compensation **Rs.16,14,419/- (Rupees Sixteen Lac Fourteen Thosuand Four Hundred Nineteen Only)** from opponent No.1-owner of Eicher Truck No. GJ-23-AT-7884 together with running interest at the rate of 7% p.a. from the date of the petition till payment along with proportionate costs of the petition..

III. The applicant / claimant do recover 50% amount of compensation **Rs.16,14,419/- (Rupees Sixteen Lac Fourteen Thosuand Four Hundred Nineteen Only)** from the opponent No.3 heir of owner / driver deceased Shaileshbhai Manubhai Panchal of Car No. GJ-01-WQ-3564 and opponent No.4 / owner as registered in the policy, together with running interest at the rate of 7% p.a. from the date of the petition till payment along with proportionate costs of the petition.

IV. The opponent No.5-Liberty General Insurance Co. Ltd., is exonerated from it's liability.

V. The opponent No.1,3 & 4 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 of the claim petition are hereby directed to deposit the said amount by RTGS/NEFT in the account maintained by the District and Session Court, Mahesana as per given following details:

Name of Bank	:	State Bank of India, Specialized Government Branch, Mahesana.
Account No.	:	40751534495.
Branch Code	:	13538.
Name of A/c Holder	:	DISTRICT AND SESSION COURT MEHSANA.
IFS Code No.	:	SBIN0013538.
MICR No.	:	384002005.

VI. The opponent Nos.1, 3 & 4 are hereby directed to deposit in the office of this Tribunal the above amount of award, after deducing the amount of interim compensation, if any, paid U/s.140 of M. V. Act, within one month from the date of this order.

VII. Out of the total amount deposited the required deficit court fees, if any, be deducted first from that amount.

VIII. Out of the amount falling to the share of applicant, 70% amount be deposited in his name in any nationalized Bank of the choice of concerned applicant, for a period of **FIVE YEARS** with a direction to the Bank not to flow any loan or not to create encumbrance etc. on the amount invested in the Fixed Deposit without prior permission of this Tribunal. However, applicant shall be entitled to withdraw the interest periodical accruing on such Fixed Deposit and remaining amount of 30% of the awarded amount (as the awarded amount may be) be paid to the applicant by an Account Payee Cheque, after due verification. The concerned Bank is also directed to release the said amount to applicant, invested in the Fixed Deposit on the date of its maturity, without requiring any further orders from this Tribunal.

IX. The award be drawn accordingly.

Signed and pronounced in open Tribunal on this 31st day of July, 2026.

Date : 31.07.2026.
Place: Mahesana.

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

*PBM