Motor Accident Claim Tribunal (Main), Navsari

<table>
<tr><td colspan="3">MAC PETITION NO. 70 OF 2014
(Claim of Rs. 25,00,000/-)</td></tr>
<tr><td>GJNV010011772014</td><td></td><td>Presented on :21.03.2014
Registered on:21.03.2014
Decided on :23.04.2026
Duration :YY MM DD
12 01 02</td></tr>
</table>

Exh.190

Petitioners:

(1) Dhrutiben Dhavalkumar Kachiwala,
Age : 24 years, Occupation : Household Work,

(2) Minor Priyansh Dhavalkumar Kachiwala,
Age : 8 months, Occupation : None,
(The petitioner no. 1 is natural guardian and next friend of petitioner no. 2)

(3) Mukeshkumar Aaditram Kachiwala,
Age : 53 years, Occupation : Retired,

(4) Meetaben Mukeshkumar Kachiwala,
Age : 47 years, Occupation : Household Work,

All petitioners are residing at : 3/2002, Sindhi Sheri, Opposite Krishnaram Mill, Salabatpura, Surat, Taluka & District : Surat.

VERSUS

Driver, Owner and Insurance Company of Jazz Car No. GJ.05.JC.8750 :

Driver :

(1) The driver has died in the said accident.

Owner :

(2) Pinkiben Dharmeshbhai @ Dharmendrabhai Kapadiya,
Age : Adult, Occupation : Household Work,
Residing at : 402, Tirupati Balaji Flats, Behind Gayatri Mandir, Opposite Chine Gate No. 1, Udhna, Magdalla Road, Taluka & District : Surat.

Insurance Company :

(3) Royal Sundaram General Insurance Company Ltd.
Address : 510, 5th Floor, 21st Century Business Center,
Ring Road, Surat.

Driver, Owner and Insurance Company of Truck No. GJ.01.UU.8865 :

Driver :

(4) Gulamnabi Dinmohammad Shaikh,
Age : Adult, Occupation : Service,
Residing at : Near Parsi Tower, At Post Sanjan,
Taluka : Umargam, District : Valsad.

Owner :

(5) Ashraf Gulamnabi Ansari,
Age : Adult, Occupation : Transport,
Residing at : Khodiyarnagar, Post Bareja,
Taluka : Daskroi, District : Ahmedabad.

Insurance Company :

(6) Future General India Insurance Company Ltd.,
Address : 2nd Floor, Bileshwar Square, Opposite Iscon
Temple, S.G.Highway, Ahmedabad.

AND

<table>
<tr><td colspan="3">MAC PETITION NO. 29 OF 2015
(Claim of Rs. 1,05,00,000/-)</td></tr>
<tr><td>GJNV010009242015</td><td></td><td>Presented on :24.02.2015
Registered on:24.02.2015
Decided on :23.04.2026
Duration :YY MM DD
11 01 30</td></tr>
</table>

Exh.34

Petitioners:

(1) Pinkiben Dharmeshbhai @ Dharmendrabhai Kapadia,
Age : 32 years, Occupation : Household Work,
Residing at : 402, Tirupati Balaji Flats,
Behind Gayatri Temple, Opposite Chine Gate No. 1,
Udhna Magdalla Road, Surat, Post Surat,
Taluka & District : Surat.

(2) Minor Ishaben Dharmeshbhai @ Dharmendrabhai Kapadia, Age : 12 years, Occupation : Study,

(3) Minor Prembhai Dharmeshbhai @ Dharmendrabhai Kapadia, Age : 7 years, Occupation : Study,
(The petitioner no.1 is legal guardian and next friend of petitioner no. 2 & 3)

(4) ~~Sushilaben Amrutlal Kapadia~~,
Age : 68 years, Occupation : Retired,
Residing at : 154, Vishal Society, Near Bhatar Cross Road, Bhatar, Surat, Taluka & District : Surat.
(has been deleted as per order passed below Exh. 61)

VERSUS

Driver, Owner and Insurance Company of Truck No. GJ.01.UU.8865 :

Driver :
(1) Gulamnabi Dinmohammad Shaikh,
Age : Adult, Occupation : Service (Driving),
Residing at : Near Parsi Tower, At Post Sanjan,
Taluka : Umargam, District : Valsad.

Owner :
(2) Ashraf Gulabnabi Ansari,
Age : Adult, Occupation : Transport,
Residing at : Khodiyarnagar, Post Bareja,
Taluka : Daskroi, District : Ahmedabad.

Insurance Company :
(3) Future General India Insurance Company Ltd.,
Address : 2nd Floor, Bileshwar Square, Opposite Iscon Temple, S.G.Highway, Ahmedabad.

AND

MAC PETITION NO. 203 OF 2015 **(Claim of Rs. 25,00,000/-)**		
GJNV010009242015		Presented on :30.12.2015 Registered on:30.12.2015 Decided on :23.04.2026 Duration :YY MM DD 10 03 16

Exh.59

Petitioners:

(1) Ushaben Prakashchandra Bharucha,
Age : 46 years, Occupation : Household Work,

(2) Krunal Prakashchandra Bharucha,
Age : 28 years, Occupation : None,
Both petitioners are residing at : Udhna Satyanagar, Surat.

VERSUS

Driver, Owner and Insurance Company of Truck No. GJ.01.UU.8865 :

Driver :

(1) ~~Gulamnabi Dinmohammad Shaikh~~,
Age : Adult, Occupation : Service (Driving),
Residing at : Near Parsi Tower, At Post Sanjan,
Taluka : Umargam, District : Valsad.
(Deleted as per order below Exh. 24)

Owner :

(2) Mohammad Ashraf Gulamnabi Mansuri,
Age : Adult, Occupation : Transport,
Residing at : Post Bareja, Khodiyarnagar,
Taluka : Daskroi, District : Ahmedabad.

Insurance Company :

(3) Future General India Insurance Company Ltd.,
Address : 2nd Floor, Bileshwar Square, Opposite Iscon Temple, S.G.Highway, Ahmedabad.

Driver, Owner and Insurance Company of Jazz Car No. GJ.05.JC.8750 :

Driver :

(4) Dharmeshbhai Amrutlal Kapadia,
Age : Adult, Occupation : Service,
Residing at : 402, Tirupati Balaji Flats,
Udhna Magdalla Road, Surat.

Owner :
(5) Pinkiben Dharmeshbhai Kapadiya,
Age : Adult, Occupation : Business,
Residing at : 402, Tirupati Balaji Flats,
Udhna Magdalla Road, Surat.

Insurance Company :
(6) Royal Sundaram General Insurance Company Ltd.
Address : 45-46, Sundaram Tower, Club Road, Chennai.

Appearance in MACP No. 70/2014:
Ld. Advocate Mr. R.D.Doshi for the petitioners
Ex-parte against the opponent no. 2, 4 & 5
Ld. Adv. Mr. R.R.Solanki for the opponent no. 3
Ld. Adv. S.K.Desai for the opponent no. 6

Appearance in MACP No. 29/2015:
Ld. Advocate Mr. R.D.Doshi for the petitioners
Ex-parte against the opponent no. 1 & 2
Ld. Adv. S.K.Desai for the opponent no. 3

Appearance in MACP No. 203/2015:
Ld. Advocate Mr. A.T.Naik for the petitioners
Ex-parte against the opponent no. 1, 2, 4 & 5
Ld. Adv. S.K.Desai for the opponent no. 3
Ld. Adv. Mr. R.R.Solanki for the opponent no. 6

- : COMMON JUDGMENT :-

1. **Claim petition no. 70/2014** is preferred under Section-166 of the Motor Vehicle Act, 1988 for getting compensation of Rs. 25,00,000/-, whereas **claim petition no. 29/2015** is preferred under Section-166 of the Motor Vehicle Act, 1988, for getting compensation of Rs. 1,05,00,000/- and **claim petition no. 203/2015** is preferred under Section-166 of the Motor Vehicle Act, 1988, for getting compensation of Rs. 25,00,000/- from the opponents.

2. As all the three claim petitions were arising out of the same vehicular accident, all the petitions have been consolidated by passing an order below Exh. 58 and the said has been mentioned in Rojnama being dated 17.12.2021 and **MACP No. 70/2014** is treated as main matter.

3. The factual matrix leading to the present proceeding is that on 15.12.2013, the deceased Dharmeshbhai (for whose compensation MACP No. 29/2015 has been filed) was going by driving Honda Jazz Car No. GJ.05.JC.4750 and deceased Dhavalkumar Mukeshkumar Kachiwala (for whose compensation MACP No. 70/2014 has been filed) and deceased Divyangbhai (for whose compenation MACP No. 203/2015 has been filed) were seated in the car and when they reached at the place of incidence, an unknown vehicle had dashed with the said car and so the driver of the car could not control the steering of the car and the accident had occurred and deceased Dhavalkumar sustained serious injuries on head and died during treatment and deceased Dharmeshbhai @ Dharmendrabhai died on the spot and deceased Divyangbhai was taken to Orange Hospital, Navsari for primary treatment then after shifted to Unique Hospital, Surat and after one month again shifted to Smimer Hospital, Surat for treatment but deceased Divyangbhai had gone into coma and on 26.07.2014 passed away. It has been stated that the driver of car and truck have not tried to avoid the accident and the accident had occurred due to negligence of both the drivers.

A complaint regarding this accident has been filed at the Navsari Rural Police Station under CR No. 269/13.

At the time of accident, the deceased Dhavalkumar of **MACP No. 70/2014** was of 26 years, hale and healthy having no vices and no disability. The deceased was working as Executive in Human Resource Department, The Grand Bhagwati Hotel (T.G.B.), Surat since 24.10.2010 and getting monthly salary of Rs. 13,800/-. On account of untimely death of the deceased in the vehicular accident, his family has become orphan and distraught. Therefore, this petition is filed for compensation of Rs. 25,00,000/- with interest @ 18% p.a., by the petitioners as dependents against the opponents.

At the time of accident, the deceased Dharmeshbhai @ Dharmendrabhai of **MACP No. 29/2015** was of 34 years, hale and healthy having no vices and no disability. The deceased was running a factory of zari covering (zari kasab) work and earning Rs. 90,000/- per month. On account of untimely death of the deceased in the vehicular accident, his family has become orphan and distraught. Therefore, this petition is filed for compensation of Rs. 1,05,00,000/- with interest @ 14% p.a., by the petitioners as dependents against the opponents.

At the time of accident, the deceased Divyangbhai of **MACP No. 203/2015** was of 27 years, hale and healthy having no vices and no disability. The deceased was doing business of zari at Bharucha Wadi, Salabatpura and earning profit of Rs. 10,000/- per month. On account of untimely death of the deceased in the vehicular accident, his family has become orphan and distraught. Therefore, this petition is filed for compensation of Rs. 25,00,000/- with interest @ 18% p.a., by the petitioners as dependents against the opponents.

4. The opponents are duly served. In all petitions, the owner of car and truck have failed to appear on the date of appearance and on subsequent dates hence, the matters have been ordered to be proceeded ex-parte against them.

Ld. Advocate for the opponent Future General India Insurance Company has appeared and filed written statement at Exh. 32 in MACP No. 70/2014, Exh. 20 in MACP No. 29/2015 and Exh. 20 in MACP No. 203/2015, whereby the negligence, involvement of the alleged vehicle in the accident, age, income and injuries sustained in the accident and all the averments of the respective petitions have been denied and further contended that the opponent driver, owner and insurance company of the truck have been joined later on and the driver of truck was not holding valid and effective driving license to drive the same but have admitted that, the interest of Ashraf Gulamnabi Ansari in vehicle no. GJ.01.UU.8865 was covered at the material time under the policy issued them subject to terms and conditions. The main contention raised by them is that, the driver of the said truck no. GJ.01.UU.8865 has denied the accident and has written letters to the Suprintendent of Police as well as Human Right Department, Gandhinagar and the Suprintendent of Police has forwarded the said application to the concerned police station for investigation purpose and the investigating officer has after investigation filed A-Summary Report against the unknown vehicle but has stated that after a time of one week the same investigating officer has filed charge-sheet against the opponent i.e. driver of the truck no. GJ.01.UU.8865 and on filing of the charge-sheet, the driver of the truck had filed an application for quashing and setting aside the same vide CMA No. 370/2016 before the Hon'ble High Court of Gujarat wherein, the Hon'ble High Court of Gujarat had granted interim stay against the proceeding and on receiving all the said summons, again an application was preferred before the Superintendent of Police, Navsari to re-investigate regarding non-involvement of the vehicle and hence the truck is not involved in the accident and they have falsely been joined as insurance company of the truck. It has been stated that, if the involvement is believed, then also there was no negligence on the part of the driver of the truck and accident had occurred due to the sole negligence of the driver of the car and in the alternatively have stated that if the negligence of the driver of the truck is believed that major contributory negligence on the part of the driver of the car is required to be held and they have stated that the petitioners are not dependent on the deceased and by raising such contentions, have urged to reject the present claims against them.

Ld. Advocate for the opponent Royal Sundaram General Insurance Company has appeared and filed written statement at Exh. 50 in MACP No. 70/2014, Exh. 36 in MACP No. 203/2015, whereby the negligence, involvement of the alleged vehicle in the accident, age, income and injuries sustained in the accident and all the averments of the respective petitions have been denied and further contended that driver of the truck no. GJ.01.UU.8865 was solely negligent and due to his negligence the accident had occurred and there was no negligence on the part of the driver of the car and the police has also filed the charge-sheet against the driver of the truck and hence there is no question of extending any liability to them and by raising such contentions have urged to reject the claims against them.

5. The petitioners have produced the following oral as well as documentary evidence:

Sr. No.	Oral Evidence in MACP No. 70/2014	Exh.
1.	Affidavit of chief examination of petitioner No.1 – Dhrutiben Dhavalbhai Kachiwala	52

Sr. No.	Documentary Evidence in MACP No. 70/2014	Exh.
1	Copy of FIR	67
2	Copy of panchnama of place of incident	68
3	Copy of inquest panchnama of decd. Dhavalkumar	69
4	Copy of PM Report of decd. Dhavalkumar	70
5	Copy of birth certificate of deceased Dhavalkumar	71
6	Copy of certificate of deceased Dhavalkumar issued by The Grant Bhagwati Hotel, Surat	72
7	Letter of intent of deceased Dhavalkumar issued by TGB Hotels regarding appointment of deceased	181
8	Copy of I-Card issued The Grand Bhagwati Hotel, Surat	182
9	Letter of increasing the salary of deceased	183
10	Letter of promotion of deceased	184
11	Letter of increasing the salary of	185

	deceased	
12	Letter of confirmation of deceased issued by TGB Hotel	186, 187
13	Original salary slips of deceased Dhavalkumar for the month of December-2010, January to May 2011, October 2012	188
14	Original letter of deceased Dhavalkumar issued by TGB Hotels	189
15	Copy of RC Book of truck no. GJ.01.UU.8865	Mark-49/14, 53/8
16	Copy of insurance policy of truck no. GJ.01.UU.8865	Mark-49/13

Sr. No.	**Oral Evidence in MACP No. 203/2015**	**Exh.**
1.	Affidavit of chief examination of petitioner No. 2 – Krunal Prakashchandra Bharucha	52

Sr. No.	**Documentary Evidence in MACP No.203/2015**	**Exh.**
1	Copy of complaint	85
2	Copy of panchnama of place of incident	86
3	Copy of death certificate of deceased Divyanbhai	87
4	Certificate of deceased Divyangbhai issued by Unique Hospital, Surat (16.12.2013 to 16.01.2014)	88
5	Copy of discharge card of deceased Divyangbhai of Smimer Hospital, Surat	89
6	Certificate of deceased Divyangbhai issued by Dr. Girish Desai	90
7	Original medical bills, receipts etc. of Rs. 5,06,608/- of deceased Divyangbhai	91
8	Copy of pan card of deceased Divyangbhai	56,111
9	Copy of driving license of deceased Divyangbhai	112

Sr. No.	Oral Evidence in MACP No. 29/2015	Exh.
1.	Affidavit of chief examination of petitioner no. 1 – Pinkiben Dharmeshbhai @ Dharmendrabhai Kapadia	54
2.	Deposition of witness of petitioners – Ashwinbhai Jashvantlal Vaiwala, Chartered Accountant	104

Sr. No.	Documentary Evidence in MACP No. 29/2015	Exh.
1	Copy of inquest panchnama of decd. Dharmeshbhai	72
2	Copy of PM report of decd. Dharmeshbhai	73
3	Original receipt with regard to publishing the notice in the newspaper	74
4	Copies of income tax for the A.Y. 2011-12 of deceased Dharmeshbhai and computation of the same	75, 76
5	Copy of income tax receipt (HUF) of the deceased Dharmeshbhai for the A.Y. 2011-12 and computation of the same	77, 78
6	Copy of income tax return of the deceased Dharmeshbhai for the A.Y. 2012-13 and computation of the same	79, 80
7	Copy of income tax return (HUF) of the deceased Dharmeshbhai for the A.Y. 2012-13 and computation of the same	81, 82
8	Copy of income tax return of the deceased Dharmeshbhai for the A.Y. 2013-14 and computation of the same	83
9	Copy of income tax return (HUF) of the deceased Dharmeshbhai for the A.Y. 2013-14 and computation of the same	84

6. The opponent Future General Insurance Company have produced the following oral and documentary evidence:

Sr. No.	Oral Evidence in all petitions	Exh.
1.	Deposition of witness of opponent – Dattatrey Sadashiv Soni, investigating officer of this incident	148
2.	Deposition of witness of opponent – Ketan Chandubhai Patel, investigating officer of this incident	152
3.	Deposition of witness of opponent – Vikramsinh Jitubhai Chavda, investigating officer of this incident	156

Sr. No.	Documentary Evidence in all petitions	Exh.
1.	Copies of police papers of this incident	150

The opponent Royal Sundaram Insurance Company have filed an application u/s. 170 of the M. V. Act, 1988 vide Exh. 65 in MACP No. 203/2015, Exh. 83 in MACP No. 70/2014 and the same had been granted by the Tribunal and the insurance company has been permitted to defend the petitions on all grounds.

The opponent Future General Insurance Company have filed an application u/s. 170 of the M. V. Act, 1988 vide Exh. 58 in MACP No. 70/2014, Exh. 62 in MACP No. 29/2015 and Exh. 64 in MACP No. 203/2015 and the same had been granted by the Tribunal and the insurance company has been permitted to defend the petitions on all grounds.

The petitioners of respective claim petitions have submitted closing purshis vide Exh.107, 108 & 113 and declared that their evidences to have been closed. The opponent Future General Insurance Company has filed closing purshis vide Exh. 158 in all claim petitions.

7. Learned advocate for the petitioners has filed written argument vide Exh. 161 in MACP No. 29/2015, Exh.164 in MACP No. 70/2014 and Exh.172 in MACP No. 203/2015 and learned advocate for the petitioner of MACP No. 203/2015 in support his contention has placed reliance on citations which are as under :

1. ***Khenyei Vs. New India Assurance Co. Ltd. and another, 2015 ACJ 1441,***
2. ***Sucheta Mishra and others Vs. Divisional Manager, National Insurance Co. Ltd., 2023 (2) T.A.C. 355 (S.C.),***
3. ***Ashalata Suryakant Patil and others Vs. New India Assurance Company Ltd. and another, 2023 (2) T.A.C. 725 (S.C.),***
4. ***United India Insurance Co. Ltd. Vs. Haribhai Bhavanbhai Nanda, 2022 (2) T.A.C. 277 (Guj.),***
5. ***Sarita Sharma and another Vs. Mohd. Usman and others, 2022 ACJ 2341,***
6. ***New India Assurance Co. Ltd. Vs. Lalitaben Prakashbhai Charaniya, 2022 (1) T.A.C. 237 (Guj.),***
7. ***Ushaben Saileshbhai Nisarata & Ors. Vs. rafiqmuhemmed Alafkhan Pathan & Ors., 2024 (1) GMAJ 265,***
8. ***Tejalkumari Kartikkumar Shah & Ors. Vs. Elkakh Shah Salim Shah & Ors., R/First Appeal No. 3950/2021 of Hon'ble Gujarat High Court,***
9. ***Jagrutiben Sunilkumar Vyas Vs. Radubhai Jesingbhai Damor, R/First Appeal No. 3941/2022 of Hon'ble Gujarat High Court,***
10. ***Legal heirs of deceased Shaileshbhai Baldevbhai Vs. Parmar Pravinsinh Chedusinh and others, 2019 ACJ 704,***
11. ***National Insurance Co. Ltd. Vs. Smt. Rajkunwar and others, 2020 (4) T.A.C. 527 (M.P.),***
12. ***Future General India Ins. Co. Ltd. Vs. Manjula Aubrey Tomlinson Christi, First Appeal No. 1769/2021 of Hon'ble High Court of Gujarat,***
13. ***United India Insurance Co. Ltd. Vs. Sumitra***

and others, 2015 ACJ 115,

14. ***Tamil Nadu State Transport Corporation Ltd. Vs. M. Bojan and others, 2015 (2) T.A.C. 80 (Mad.),***
15. ***National Insurance Co. Ltd. Vs. Anthony (since deceased) and others, 2015 ACJ 2392,***
16. ***Meera Bai and others Vs. ICICI Lombard General Insurance Company Ltd. & Anr., Special Leave Petition No. 3886 of 2019 of Hon'ble Supreme Court of India***
17. ***The Iffco Tokio General Insurance Co. Ltd. Vs. Bhagyashri Ganesh Gaikwad ; Sangita Shivaji Gaikwad, Laxman Ramchandra Gogawale, 2023 Law Suit (Bom) 1335,***

The learned advocate for the petitioner of MACP No. 29/2015 in support his contention has placed reliance on citations which are as under :

1. ***Hirabhai Mangabhai Vs. Maganbhai Somabhai, 1996 Law Suit (Guj.) 425,***
2. ***New India Assurance Co. Ltd. Through Branch Manager; Washeema Bano and others Vs. Washeema Bano and others ; Harpreet Singh and others,***
3. ***National Insurance Co. Ltd. through Regional Office Vs. Indian Roadlines Prop. P.V. Manek and others, 2022 LawSuit (Guj) 6192,***
4. ***Rava Parbat Hethvadiya Vs. Lakhibai Wd/o. Karsan Bhachu Aayar & Ors., 2025 Law Suit (Guj.) 29,***
5. ***Mohammed Saleem S/o. Khadersab Akki Vs. State of CPI, 2025 Law Suit (Kar) 61,***
6. ***National Insurance Company Limited Vs. Pranay Sethi and others, 2017 Law Suit (SC) 1093,***
7. ***Ibrahimbhai Abdulbhai Vora and Ors. Vs. Jyotshnaben Rajubhai Amin and others, 2012 Law Suit (Guj.) 339,***
8. ***Nagappa Vs. Gurudayal Singh, 2002, Law Suit (SC) 1162,***
9. ***Rajwati @ Rajjo & Ors.; Seema & Ors. Vs. United India Insurance Company Ltd., 2022 Law Suit (SC) 1447,***
10. ***New India Assurance Co. Ltd. Vs. D. Subramanyam and others, 2025 Law Suit***

(AP) 93,

11. ***Sarla Verma and others Vs. Delhi Transport Corporation and another, 2009 Law Suit (SC) 613,***

The learned advocate for the Future General Insurance Co. Ltd has filed written argument vide Exh. 173 in MACP No. 70/2014, Exh. 174 in MACP No. 29/2015 and Exh. 175 in MACP No. 203/2015. The learned advocate for the Future General Insurance Co. has also filed reply of written argument of petitioners vide Exh. 176 in MACP No. 70/2014, Exh.177 in MACP No. 29/2015 and in support of his contention has placed reliance on citations which are as under :

1. ***Shanabhai Maganbhai Gohel Vs. Nangal Navinchandra Mukhi, R/First Appeal No. 1082/2022 of Hon'ble High Court of Gujarat,***

Read the R&P and took into consideration the evidences produced on record.

8. The following issues are framed in **MACP No.70/2014** vide Exh. 51:

ISSUES

1	**Whether the claimant/s prove that the deceased died because of rash and negligent driving on part of driver/s of the vehicle/s involved in this accident ?**
2	**Whether the claimants are entitled to get compensation ? If yes, from whom and what amount ?**
3	**What order and award ?**

My findings on the above issues of the claim petition are as under and the reasons for the same are discussed herein after.

FINDINGS	
1	**In the affirmative.**
2	**In the affirmative, as per final order.**
3	**As per final order.**

9. The following issues are framed in **MACP No.29/2015** vide Exh. 51:

ISSUES

1	**Whether the claimant/s prove that the deceased died because of rash and negligent driving on part of driver/s of the vehicle/s involved in this accident ?**
2	**Whether the claimants are entitled to get compensation ? If yes, from whom and what amount ?**
3	**What order and award ?**

My findings on the above issues of the claim petition are as under and the reasons for the same are discussed herein after.

FINDINGS	
1	**In the affirmative.**
2	**In the affirmative, as per final order.**
3	**As per final order.**

10. The following issues are framed in **MACP No.203/2015** vide Exh.46:

ISSUES

1	**Whether it is proved that the deceased died on account of rashness or negligent driving on the part of driver/s of the vehicle/s involved in this accident ?**
2	**Whether the claimants are entitled to get compensation ? If yes, from whom and what amount ?**
3	**What order and award ?**

My findings on the above issues of the claim petition are as under and the reasons for the same are discussed herein after.

FINDINGS	
1	**In the affirmative.**
2	**In the affirmative, as per final order.**
3	**As per final order.**

REASONS

ISSUE NO. 1 IN ALL THE PETITIONS:

11. It is required to be noted that as all the said petitions are arising out of same vehicular accident, so, the said petitions are decided by this common judgment.

12. While deciding the point of negligence, it has to be borne in mind that the negligence is required to be proved in claim petition under Section 166 of the Act only on the touchstone of the preponderance of probability and not beyond doubt. Above referred ratio is laid down by Hon'ble Apex Court in the cases of ***i) Bimla Devi v/s H.R.T.C., reported in AIR 2009 SC 2819 and ii) Parmeshwari Devi v/s Amir Chand, reported in 2011 (11) SCC 635.***

13. The issue no. 1 is pertaining to negligence on the part of driver of offending vehicle involved in the incident. Negligence means failure to exercise required degree of vehicle expected of a prudent driver. It is a settled principle of law that the burden to prove negligence on the part of driver of offending vehicle is on the petitioner who asserts it. The petitioner has to produce reasonable evidence to show that the accident took place due to negligence on the part of driver of the vehicle involved in the accident. Therefore, burden shifts upon the other side to explain the circumstances under which the accident occurred. In the claim petition for the accident under the Motor Vehicle Act strict proof of negligence is not necessary. Negligence can be established even on the basis of preponderance of probabilities. It is true that sometimes direct evidence to prove the negligence is not available and therefore, principle of ***res ipsa loquiter*** i. e. things speak for themselves is required to be kept in mind at the time of deciding negligence. This settled principle of law has been frequently and exhaustively discussed in various judgments of Hon'ble Superior Courts as well as our Hon'ble High Court, as for instance Hon'ble Apex Court in the case of ***Gujarat State Road Transport Corporation v/s Kamlaben Valjibhai Vora reported in 2001(3) GLR 2528***.

14. In order to prove this claim, the depositions of the petitioners are recorded in both petitions. On perusal of same which are the affidavits as per the provisions of Order-18, Rule-4 of the C.P.C. in lieu of examination-in-chief, there is narration of happening of incident as stated in Exh.1, it has been averred that on 15.12.2013, the deceased Dharmeshbhai (for whose compensation MACP No. 29/2015 has been filed) was going by driving Honda Jazz Car No. GJ.05.JC.4750 and deceased Dhavalkumar Mukeshkumar Kachiwala (for whose compensation MACP No. 70/2014 has been filed) and deceased Divyangbhai (for whose compenation MACP No. 203/2015 has been filed) were seated in the car and when they reached at the place of incidence, an unknown vehicle had dashed with the said car and so the driver of the car could not control the steering of the car and the accident had occurred and deceased Dhavalkumar sustained serious injuries on head and died during treatment and deceased Dharmeshbhai @ Dharmendrabhai died on the spot and deceased Divyangbhai was taken to Orange Hospital, Navsari for primary treatment then after shifted to Unique Hospital, Surat and after one month again shifted to Smimer Hospital, Surat for treatment but deceased Divyangbhai had gone into coma and on 26.07.2014 passed away. It has been stated that the driver of car and truck have not tried to avoid the accident and the accident had occurred due to negligence of both the drivers.

15. Having considered the arguments put forward, it is an undisputed fact that the deceased of MACP No. 70/2014, 29/2015 & 203/2015 have died in the vehicular accident and the documentary evidences support the said contention. The petitioners have hinted towards the fault against the driver of the Truck and on perusal of the F.I.R. vide Exh. 67 & 85, it transpires that the same has been filed against the unknown vehicle driver and in the said F.I.R., it has clearly been stated that, all the deceased persons were going in the said Honda Jazz Car No. GJ.05.JC.4750 and while returning to Surat, the accident had occurred and they had died due to the accidental injuries. On perusal of the panchnama of place of incident produced vide Exh. 68 & 86, the said Jazz Car is found at the place and parts which have been damaged of the said car are also described. It is required to be noted that, the charge-sheet has been filed against the driver of the truck which is produced on record vide Mark-49/7 as well as along with the papers of C.C. No. 231/2015 produced on record vide Exh. 150, the petitioners have hinted towards the sole negligence of the driver of the truck and while insurance company of the truck has disputed the same and has raised a dispute regarding the involvement of the truck in the accident and that they having been falsely joined. As regards the said dispute is concerned, it is to be noted that the driver of the truck has not entered the witness box as he has died, he was only person who could have thrown light on the same and he as well as the persons seated in the car have died and this aspect regarding the involvement of the vehicle can be decided on the basis of the evidence produced on record. No doubt the dispute of involvement of the truck has been taken by the insruance company of the truck and as regards the same, it has been stated that, the investigating officer has falsely filed the charge-sheet. It is pertinent to note that the opponent no. 3 Future Gen. Ins. Co. have examined 3 witnesses who were the investigating officers of the said offience vide Exh. 148, 152 & 156 and have also relied on the papers on record along with charge-sheet of learned trial court in C.C. No. 231/2015 and all the papers have been produced in this case vide Exh. 150. Now as regards the involvement of the truck is concerned, it is an undisputed fact that the complaint was filed against the driver of the unknown vehicle and after investigation, the involvement of the truck was being found out and the investigating officer has proceed to investigate regarding the same and then after filed A-Summary report. As regards the A-Summary report is concerned, the evidence of the investigating officer examined by the opponent Future General Insurance Company vide Exh. 148 is required to be taken into consideration. From his deposition, it transpires that, he had investigated the said offence and he had received the further investigation from the previous investigating officer and has clearly stated that during his investigation as well as investigation done by the previous investigating officer, the vehicle number was revealed but the owner was not being found out and in these circumstances, the A-Summary report was filed. So this clearly shows that, the filing of A-Summary report was the owner of the truck not being found out, the said investigating officer has further stated that he has filed the charge-sheet after recording the statement of driver of truck Gulamnabi Din Mohamad Mansuri and he had also carried out the panchnama of the truck in presence of the panchas. He has admitted that he had not obtained any cctv footage of the toll plaza. From his admission in the cross-examination, it is emerging on record that the driver of the truck Gulamnabi who had filed quashing petition challenging the involvement of the truck and so filing of the charge-sheet against him has withdrawn the said petition from the Hon'ble High Court of Gujarat and has clerly admitted that, while carrying out the panchnama of the said truck which is produced in the papers vide Exh. 150, the driver of the truck Gulamnabi was also present and whatever has been stated in the panchnama is correct. The another investigating officer Ketan Chandubhai Patel has been examined vide Exh. 152 and on going through the examination-in-chief, he has stated that during his investigation, the vehicle number of the involved vehicle in the accident could not be found out, he had not seized/obtained any cctv footage from the toll plaza and on sending notice to the owner of the truck, the owner has stated that no accident had occurred by his truck and then after, had handed over the investigation to another investigating officer and in the cross-examination, he has admitted that, so called statement of the owner of the truck was taken by him on telephone but has not written down the said statement of the owner of the truck then after, the third investigating officer V.J.Chavda has been examined vide Exh. 156 who has stated that, no registration number of the vehicle involved in the accident has bee stated in the statement of Niravkumar who was seated in the car and during his investigation, it was revealed that the accident had occurred by GJ.01.UU.8865 and on going to the residence of the owner of the truck, he was not found out as he was not residing at that address. He has stated that, he had not seized the truck and sent it to the FSL nor had taken any statement of the driver of the truck and the involvement of the truck was being found out on verifying cctv footage of the toll plaza. In the cross-examination, he has admitted that, as regards the owner of the truck is concerned, he had inquired from Yakubbhai as well as Vikrambhai. So the insurance company of the truck has raised a dispute regarding the involvement. As regards the dispute on hand is concerned, it is pertinent to noted that the driver of the truck had filed the quashing petition challenging the filing of the chargesheet against him in the context of the said accident and in the same, the Hon'ble High Court of Gujarat had granted the interim stay but it appears that then after by an order dated 13.12.2022 the application filed by the driver of the truck which was numbered as R/CRMA No. 370/2016 in which the interim stay was granted, the matter was disposed of as it was withdrawn and hence there is no question of now any stay regarding the filing of the charge-sheet against the said truck driver in the said incident.

It is also required to be noted that, the investigating officer had filed the charge-sheet against the driver of the said truck and criminal case no. 231/2015 was pending before the learned trial court and as per the order being dated 08.03.2025, the said criminal case had abated as the accused Gulamnabi who was the driver of the truck had died and hence, in these circumstances, there is no dispute remaining from the driver and owner of the said truck as regards the involvement as even the owner of the truck has not appeared before this tribunal nor has deposed before this tribunal. This dispute has been raised by the insurance company of the truck and on the basis of the afore stated discussion, this dispute does not appear to be tenable.

It is also required to be noted that the witness who has been examined vide Exh. 148 has produced all the investigation papers as regards the said accident for which C.C. No. 231/2015 was filed. On going through the said papers, there is panchnama of the truck no. GJ.01.UU.8865 and as per the said panchnama which was carried out in presence of two panchas, the opponent Gulamnabi who was the driver of the said truck had brought the truck to the police station and damage to the parts of the truck has been described and the most important fact is that the extention which is attached behind the truck is of orange colour and leaving apart the iron body of the said truck, is also of orange colour and below the headlight there is blue and orange colour. Now as regards the same, the report of the scientific officer, investigation van, Navsari being dated 06.12.2013 is required to be taken into consideration and the said officer has examined the car and has prima facie came to the conclusion regarding the car having hit by big vehicle and has clearly stated that,

> *"સદર બનાવ બાબતે શકયતા જણાય છે કે કોઈ મોટા વાહન ભોગ બનનારની કારને ટક્કર મારેલ હોવાની શકયતા છે તથા કલર માર્કના આધારે કહી શકાય કે, ઓરેંજ, લાલ તથા વાદળી (નીલા) જેવા રંગના કોઈ વાહને ટક્કર મારી હોવાની શકયતા છે."*

So, considering the panchnama of the said truck as well as the report of the scientific officer in regard to the car, on the back portion of the car, there are colour marks and below the headlight of the truck, there is orange and blue colour mark as well as the surrounding the body of the truck is also orange mark. So this shows that there are all possibilities regarding the said truck having dashed with the car. Moreover the most important fact is that the driver of the Truck has not stepped into witness box to explain the circumstances in which the accident had occurred.

It is also required to be noted that, as per the panchnama, the driver of the truck had admitted before the panchas and investigating officer that before the said toll plaza, opposite to Gebanshah Dargah, the accident has occurred by his truck. No doubt, the A-summary was filed but it was filed on the basis of the say of the owner of the truck, that no accident had occurred with the truck but his statement was not even recorded as per the admission by the investigating officer and then after the investigating officer has filed the charge-sheet and arrested the driver of the truck and had produced him before the learned trial court and then after as the driver of the truck had died, the Criminal Case was abated before the learned trial court. The driver of the truck has made confession before the panchas and the police officer while the panchnama of the truck was being carried out but it is pertinent to note that the said petition is filed claiming compensation of the death of the persons in the vehicular accident and as far as claim petitions under the M.V. Act are concerned, the provisions of the Evidence Act would not strictly apply. It is also to be noted that, ***"confessions to the police are generally inadmissible under the Evidence Act, in MACT Cases, courts often accept their statements to establish the 'preponderance of probability' to secure 'just compensation' for the victim."*** It is also required to be noted that, till the driver of the truck was alive he had not appeared before the tribunal nor has raised any dispute or made any contention regarding the said statement being not made voluntarily was extracted via coercion and in these circumstances also the dispute raised by the insurance company of the truck regarding non-involvement of the truck does not hold any force.

Further on perusal of report of PSI, Navsari Rural Police Station to the Superintendent of Police being dated 02.01.2014 regarding the permission to go out of the district for investigation, in the same also, it has been clearly stated that on verifiying the camera footage of the toll-plaza, the headlight of the said truck is found to be broken and not working and as the owner was residing at Ahmedabad permission was sought to go to Ahmedabad. It is clear from the the afore stated evidences that, the said truck was involved in the accident and the driver of the truck has not tried to avoid the accident and the Truck is bigger vehicle in comparison to car and the driver was required to take more care and caution while driving the vehicle and should be more cautious while driving on the road but he has failed to do so.

16. Therefore, on cumulative analysis of the afore stated documentary evidences and on the basis of the discussion made above, there appears to be sole negligence of the driver of the truck Gulamnabi i.e. opponent no. 1 and there was no negligence on the part of the driver of the car and as far as the persons seated in a car are concerned, there is no question of any negligence on their part and hence when there does not appear to be any negligence on the part of the driver of the car therefore the opponent driver, owner and Royal Sundaram Insurance Company of the involved Jazz Car No. GJ.05.JC.8750 are required to be exonerated.

17. As far as deceased of MACP No. 203/2015 is concerned, he has died nearly after 6-7 months of the accident and on going through the evidences on record, he had suffered serious injuries and was under constant treatment in various hospitals and had expended more than Rs. 5,00,000/- for treatment and medicines and due to the accidental injuries, he was totally bed ridden and in coma and no doubt the post mortem was not carried out after his death but considering the evidences on record along with the injuries to the deceased and the fact that he was under treatment in various hospitals and after the accident, he was in coma which is not disputed by the other side and in this circumstances, it is established that the deceased had died due to the accidental injuries and had not died a natural death.

18. Moreover the most important fact is that the driver of the Truck has expired and the owner of the truck has not stepped into witness box to explain the circumstances in which the accident occurred. Therefore, it can safely be presumed that whatever allegations and averments made by the petitioners against the driver of Truck are indirectly accepted by the opponents. As per the following Judgements, non-examination of driver of the Truck i. e. driver of opponent No. 1 will lead the Tribunal to believe that the said driver was rash and negligent in driving. ***(1) 1981 ACJ 460 [Ramsumer Habai Yadav v/s State of Maharashtra] (2) 1981 ACJ 428 [Dinanath & Ors. v/s Tarachand and Sons & Ors.].***

19. So, on the basis of the discussion made above and considering the manner in which the accident had occurred, the circumstances speak for themselves and therefore, the principle of ***res ipsa loquiter*** is equally applicable in the present case and the evidences are also pointing towards the sole negligence of the driver of the Truck. So, considering the manner in which the accident had occurred along with the evidences on record there appears to be sole negligence of the driver of the Truck and there was no negligence on the part of deceased person who were driving the car or the other deceased persons who were seated in the car and therefore, I answer the **Issue No. 1, accordingly in the "affirmative".**

ISSUES NO. 2 & 3 IN ALL CLAIM PETITIONS :

IN MACP No. 70/2014 (FATAL):

20. While discussing the Issue No.1, it is held that the driver of the Truck was solely negligent for happening of the accident and he is a wrong and his act is a tortuous act and therefore, the petitioners are entitled for compensation. In a fatal case arising out of a vehicular accident, compensation is broadly divided into **pecuniary loss and non-pecuniary loss.**

21. Normally, in a fatal accident case arising out of vehicular accident, the Tribunal is required to award compensation on two heads viz. **(1) Pecuniary loss, and (ii) Non-pecuniary loss.** Pecuniary loss consists of: Loss of income, expenditure incurred for funeral, medicines, treatment charges, if deceased has received treatment after the accident and before the death, transportation charges, etc., and non-pecuniary loss will include Pain, Shock and Suffering, if the deceased has survived for some time after the accident and before his death, loss of estate, loss of expectation of life, loss of consortium, etc.

PECUNIARY LOSS :

22. In the present case, as regards the income of the deceased is concerned, it has been pleaded that the deceased Dhavalkumar was working as Executive in Human Resource Department, The Grant Bhagwati Hotel (T.G.B.), Surat since 24.10.2010 and getting monthly salary of Rs.

13,800/-. As far as income of the deceased is concerned, the petitioner no. 1 has produced the copy of appointment letter of deceased Dhavalkumar vide Exh. 181 and as per this, he was appointed as a cashier on 24.10.2010. Further the petitioner has produced original letter of deceased Dhavalkumar vide Exh. 183, wherein, it appears that, the salary of deceased has been raised with effect from 01.09.2011 from Rs. 9,500/- to Rs. 12,000/- per month. Further the petitioner has produced elevation letter of deceased vide Exh. 184, it appears that, the deceased Dhavalkumar was elevated as a H.R.Executive from date 01.07.2012. The petitioner has produced original letter vide Exh. 185, it appears that, the salary of deceased was increased from 01.11.2012 as Rs. 13,800/- per month. The petitioner has produced original letter vide Exh. 189, it appears that, the deceased Dhavalkumar was working with TGB Hotels from 24.10.2010 in Human Resource Department as H.R.Executive until his demise and then after, since 01.04.2018 the ownership of the hotel was changed from TGB to Orange Megastructure LLP therefore all official records not available with them. Further the petitioner has produced salary slip of deceased vide Mark-53/7 and on going through the same, the gross salary of deceased is Rs. 13,800/- for the month of November 2013 and deducting professional tax of Rs. 200/-, net salary comes to Rs. 13,600/-. The petitioner has admitted in the cross-examination that she has not examined any witness with regard to the income of the deceased. But considering the afore stated documentary evidences which are original along with the document Mark-53/7, it is believable that the deceased was drawing salary of Rs. 13,800/- per month and hence this Tribunal deems it just and proper to consider the income of the deceased at **Rs. 13,600/- per month**.

23. The ratio laid down in the case of ***National Insurance Co. Ltd. Vs. Pranay Sethi and Ors.*** in Special Leave Petition (Civil) delivered on 31.10.2017 by the Hon'ble Supreme Court, is required to be considered and, it has been held that ....

> ***58. The seminal issue is the fixation of future prospects in cases of deceased who is self-employed or on a fixed salary. Sarla Verma (supra) has carved out an exception permitting the claimants to bring materials on record to get the benefit of addition of future prospects. It has not, per se, allowed any future prospects in respect of the said category.***
>
> ***59. Having bestowed our anxious consideration, we are disposed to think when we accept the principle of standardization, there is really no rationale not to apply the said principle to the self-employed or a person who is on a fixed salary. To follow the doctrine of actual income at the time of death and not to add any amount with regard to future prospects to the income for the purpose of determination of multiplicand would be unjust. The determination of income while computing compensation has to include future prospects so that the method will come within the ambit and sweep of just compensation as postulated Under Section 168 of the Act. In case of a deceased who had held a permanent job with inbuilt grant of annual increment, there is an acceptable certainty. But to state that the legal representatives of a deceased who was on a fixed salary would not be entitled to the benefit of future prospects for the purpose of computation of compensation would be in apposite. It is because the criterion of distinction between the two in that event would be certainty on the one***

hand and staticness on the other. One may perceive that the comparative measure is certainty on the one hand and uncertainty on the other but such a perception is fallacious. It is because the price rise does affect a self-employed person; and that apart there is always an incessant effort to enhance one's income for sustenance. The purchasing capacity of a salaried person on permanent job when increases because of grant of increments and pay revision or for some other change in service conditions, there is always a competing attitude in the private sector to enhance the salary to get better efficiency from the employees. Similarly, a person who is self-employed is bound to garner his resources and raise his charges/fees so that he can live with same facilities. To have the perception that he is likely to remain static and his income to remain stagnant is contrary to the fundamental concept of human attitude which always intends to live with dynamism and move and change with the time. Though it may seem appropriate that there cannot be certainty in addition of future prospects to the existing income unlike in the case of a person having a permanent job, yet the said perception does not really deserve acceptance. We are inclined to think that there can be some degree of difference as regards the percentage that is meant for or applied to in respect of the legal representatives who claim on behalf of the deceased who had a permanent job than a person who is self-employed or on a fixed salary. But not to apply the principle of standardization on the foundation of perceived lack of certainty would tantamount to remaining oblivious to the marrows of ground reality. And, therefore, degree-test is imperative. Unless the degree-test is applied and left to the parties to adduce evidence to establish, it would be unfair and inequitable. The degree-test has to have the inbuilt concept of percentage. Taking into consideration the cumulative factors, namely, passage of time, the changing society, escalation of price, the change in price index, the human attitude to follow a particular pattern of life, etc., an addition of 40% of the established income of the deceased towards future prospects and where the deceased

was below 40 years an addition of 25% where the deceased was between the age of 40 to 50 years would be reasonable.

60. The controversy does not end here. The question still remains whether there should be no addition where the age of the deceased is more than 50 years. Sarla Verma thinks it appropriate not to add any amount and the same has been approved in Reshma Kumari. Judicial notice can be taken of the fact that salary does not remain the same. When a person is in a permanent job, there is always an enhancement due to one reason or the other. To lay down as a thumb Rule that there will be no addition after 50 years will be an unacceptable concept. We are disposed to think, there should be an addition of 15% if the deceased is between the age of 50 to 60 years and there should be no addition thereafter. Similarly, in case of self-employed or person on fixed salary, the addition should be 10% between the age of 50 to 60 years. The aforesaid yardstick has been fixed so that there can be consistency in the approach by the tribunals and the courts.

61. In view of the aforesaid analysis, we proceed to record our conclusions:
(i) The two-Judge Bench in Santosh Devi should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in Sarla Verma, a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate Bench.
(ii) As Rajesh has not taken note of the decision in Reshma Kumari, which was delivered at earlier point of time, the decision in Rajesh is not a binding precedent.
(iii) While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition

> ***should be 15%. Actual salary should be read as actual salary less tax.***
> ***(iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.***
> ***(v) For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paragraphs 30 to 32 of Sarla Verma which we have reproduced herein before.***
> ***(vi) The selection of multiplier shall be as indicated in the Table in Sarla Verma read with paragraph 42 of that judgment.***
> ***(vii) The age of the deceased should be the basis for applying the multiplier.***
> ***(viii) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.***

24. Considering the ratio laid down in the case of Pranay Sethi (Supra) and further considering the fact that the deceased was not permanent job, prospective income is required to be added.

25. As far as the age of the deceased is concerned, the petitioner has stated that deceased was aged 26 years at the time of accident and in order to substantiate the say the petitioner has produced the copy of birth certificate vide Exh. 71 and in the column of date of birth it is mentioned as 20.09.1988 and whereas the said accident took place on 14.12.2013 and therefore the age of the deceased was 25 years 02 months 24 days and hence considering the same, the age of the deceased is held to be **26 years** at the time of accident and so, as per the ratio laid down in afore stated judgment, 40% addition is required to be made in the monthly income of the deceased**.** So, the monthly income of the deceased comes to **Rs. 19,040/- (Rs. 13,600/- x 40%).** Thus, the yearly income of the deceased is **Rs. 2,28,480/- (13,600 x 12)**.

26. Now, we have to deduct the living expenses of the deceased, however, as per the judgment of the Hon'ble Supreme Court given in the case of ***Sarla Verma v. Delhi Transport Corpn. (Supra),*** in para 14 it has been specifically stated that ***'Having considered several subsequent decisions of this court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased should be one-third (1/3rd) where the number of dependent family members is 2 to 3; one-fourth(1/4th) where the number of dependent family members is 4 to 6; and one-fifth (1/5th) where the number of the dependent family members exceed six'.*** Here the deceased was married and petition has filed by the wife, minor daughter, father and mother of the deceased and they are dependants of the deceased hence, 1/4th amount is required to be deducted as personal expenses of the deceased. 1/4th amount of **Rs. 2,28,480/- is Rs. 57,120/-, hence, Rs. 1,71,360/- (Rs. 2,28,480/- less Rs. 57,120/-)** can be considered as pecuniary loss to the petitioners. In the judgment given in the case of ***Sarla Verma Vs. Delhi Transport Corpn. (Supra),*** the Hon'ble Supreme Court has restructured the multiplier column of Schedule - II and according to this restructured column of multiplier the person belonging to the age group 26 to 30 years is entitled for a **multiplier of 17**. Here, the deceased was aged about 26 years, and therefore, the petitioner is entitled for a multiplier of 17 and hence, if **Rs. 1,71,360/-** is multiplied by **17** then **Rs. 29,13,120/-** will come which can be considered as prospective loss of income to the petitioner because of death of the deceased.

NON PECUNIARY LOSS:

Non-pecuniary loss includes compensation under the head of loss of estate; loss of expectancy of life; pain, shock and suffering; etc.

The petitioners have asked the amount towards, loss of consortium; compensation to family; members for loss of love and affection; medical; attendant and transportation charges; funeral charges etc.

So far as the quantum of compensation under the conventional head is concerned, considering the ratio laid down in the case of ***National Insurance Co. Ltd. Vs. Pranay Sethi & Co. (supra),*** the amount is required to be awarded.

27. It is to be noted that as far as deceased is concerned, the said petition has been filed by the wife, minor daughter, father and mother of deceased hence, considering the afore stated proposition and as per the decision of the ***Hon'ble Apex Court in the case of National Insurance Co.Ltd. Vs. Pranay Sethi reported in AIR 2017 SC 5157,*** it would be just and proper that an amount of Rs. 44,000/- towards spousal consortium and love and affection to the petitioner No.1 wife and Rs. 44,000/- towards filial consortium and love and affection to the petitioner No. 2 being the daughter of the deceased and Rs. 44,000/- towards parental consortium to the petitioner No. 3 being the father of the deceased and Rs. 44,000/- towards parental consortium to the petitioner No. 4 being the mother of the deceased and the petitioners are entitled to Rs. 16,500/- towards loss of estate and Rs. 16,500/- towards funeral expenses.

28. So, under the afore stated conventional heads, in the petition, **Rs. 2,09,000/-** is granted to the petitioners.

29. In view of the above referred discussions, petitioners is entitled for following amount as compensation:

Sr. No.	Different heads	Amount(Rs.)
01.	As prospective loss of income.	29,13,120/-
02.	As loss of Estate, and as funeral expenses.	2,09,000/-
	Total Rs.	**31,22,120/-**

The petitioners have filed present claim petition for getting compensation of Rs. 25,00,000/- but as discussed above they are entitled to get compensation of Rs. 31,22,120/-. In such case, the question arise that whether petitioners can get compensation than what they have actually claimed for ? In this regard, reference is required to be made to the ratio laid down by Hon'ble Apex Court in the case of ***Nagappa v/s Gurudayal reported in 2003 (2) SCC 274,*** wherein it is held in Para No.21 that,

> *"21. "For the reasons discussed above, in our view, under the MV Act, there is no restriction that the Tribunal/Court cannot award compensation amount exceeding the claimed amount. The function of the Tribunal/Court is to award "just" compensation which is reasonable on the basis of evidence produced on record...."*

From the above referred ratio, it becomes clear that Tribunal can grant higher amount than what has been actually claimed by the petitioners. Having considering the evidence on the point of quantum and in that view of the matter, petitioners are entitled for Just compensation of **Rs. 31,22,120/- (Rupees Thirty One Lacs Twenty Two Thousand One Hundred Twenty).**

IN MACP No. 29/2015 (FATAL):

30. While discussing the Issue No.1, it is held that the driver of the Truck was solely negligent for happening of the accident and he is a wrong and his act is a tortuous act and therefore, the petitioners are entitled for compensation. In a fatal case arising out of a vehicular accident, compensation is broadly divided into **pecuniary loss and non-pecuniary loss.**

31. Normally, in a fatal accident case arising out of vehicular accident, the Tribunal is required to award compensation on two heads viz. **(1) Pecuniary loss, and (ii) Non-pecuniary loss.** Pecuniary loss consists of: Loss of income, expenditure incurred for funeral, medicines, treatment charges, if deceased has received treatment after the accident and before the death, transportation charges, etc., and non-pecuniary loss will include Pain, Shock and Suffering, if the deceased has survived for some time after the accident and before his death, loss of estate, loss of expectation of life, loss of consortium, etc.

PECUNIARY LOSS :

32. In the present case, as regards the income of the deceased is concerned, it has been pleaded that the deceased was running a factory of zari covering (zari kasab) work and earning Rs. 90,000/- per month. As far as income of the petitioner is concerned, the petitioners have examined witness vide Exh. 104 who is the chartered accountant through whom the deceased Dharmeshbhai was filing the I.T. Return of his business as well as income from the HUF. The witness has stated that Dharmeshbhai had income from his own earning as well as HUF and he used to file the returns for the same and the income tax for the A.Y. 2011-12, 2012-13, 2013-14 of deceased Dharmeshbhai have been filed by him and which are the true and correct as per his calculation and has further stated that, the last income tax return signed by Dharmeshbhai for A.Y. 2012–13 was filed on 30.03.2013 in which the income of the deceased for the A.Y. 2012-13 is Rs. 4,94,863/-. The petitioner has produced the copy of the ITR for the A.Y. 2011-12 vide Exh. 75 & 76 and total income of the deceased is shown as Rs. 1,96,167/- and the same is filed on 31.03.2012 and has also produced the copy of ITR (HUF) for the A.Y. 2011-12 vide Exh. 77 & 78 and total income of the HUF is shown as Rs. 2,09,283/- and the same is filed on 30.09.2011 and has produced copy of the ITR for the A.Y. 2012-13 vide Exh. 79 & 80 and total income of the deceased is shown as Rs. 4,94,863/- and the same is filed on 30.03.2013 and has produced copy of ITR (HUF) for the A.Y. 2012-13 vide Exh. 81 & 82 and total income of the HUF is shown as Rs. 2,14,226/- and the same is filed on 30.09.2012 and has pro-

duced copy of the ITR (HUF) & Calculation for the A.Y. 2013-14 vide Exh. 83 & 84 and total income of the HUF is shown as Rs. 5,04,741/- and the same is filed on 14.10.2013. On going through the afore stated ITR returns of the deceased, prior to the date of accident, the last I.T. Return has been filed by the deceased in his personal capacity which is produced on record vide Exh. 83 and the said is filed on 30.03.2013 and then after, there is no ITR of the deceased in personal capacity and it is also to be noted that, on perusal of the ITR filed in the personal capacity by the deceased vide Exh. 75 & 76, the income has increased as per Exh. 79 & 80 and in these circumstances, the ITR produced on record vide Exh. 79 & 80 is to be considered for assessing the income of the decased. The petitioners have also produced the ITR which are pertaining to the HUF. It transpires that, the deceased was the karta of the hindu undivided family and there is no evidence that the said HUF has been dissolved and the HUF does not dissolve on the death of the karta and the eldest co-parcener (male or female) automatically steps up as the new karta. So the death of the karta does not impact the existence of the HUF. The legal entity continues and the new karta manages the family assets. There is no evidence regarding the loss of income from the HUF to the petitioners and at this juncture, the admission made by the petitioner below Exh. 54 is very important wherein she has admitted that, in the said HUF, there was inclusion of the petitioners as well as the deceased and the chartered accountant has been examined vide Exh. 104 has also admitted in the cross-examination that, in the HUF, there is inclusion of all the family members which also includes minor and that as on today also the I.T. Return of the HUF is filed by him and the most important admission by him is that after the death of the deceased, there is still income of the HUF and hence, in these circumstances, considering the legal settled proposition as well as the fact that, petitioners have not said or brought on record that the HUF has been dissolved and so when as on today also there is income of the HUF i.e. Hindu Undivided Family and as per law, the eldest co-parcener automatically steps up as the new karta and in these circumstances, there is no loss of income from the said HUF and hence, the income tax returns filed of the HUF cannot be considered while assessing the income of the deceased and in these circumstances, as far as the income of the deceased is concerned, the document Exh. 79 and it is required to be taken into consideration and deducting the income tax which has been paid of Rs. 28,379/-, and the income of the deceased assessed as **Rs. 4,66,484/- per annum.**

33. The ratio laid down in the case of ***National Insurance Co. Ltd. Vs. Pranay Sethi and Ors.*** in Special Leave Petition (Civil) delivered on 31.10.2017 by the Hon'ble Supreme Court, is required to be considered and, it has been held that ....

> ***58. The seminal issue is the fixation of future prospects in cases of deceased who is self-employed or on a fixed salary. Sarla Verma (supra) has carved out an exception permitting the claimants to bring materials on record to get the benefit of addition of future prospects. It has***

not, per se, allowed any future prospects in respect of the said category.

59. Having bestowed our anxious consideration, we are disposed to think when we accept the principle of standardization, there is really no rationale not to apply the said principle to the self-employed or a person who is on a fixed salary. To follow the doctrine of actual income at the time of death and not to add any amount with regard to future prospects to the income for the purpose of determination of multiplicand would be unjust. The determination of income while computing compensation has to include future prospects so that the method will come within the ambit and sweep of just compensation as postulated Under Section 168 of the Act. In case of a deceased who had held a permanent job with inbuilt grant of annual increment, there is an acceptable certainty. But to state that the legal representatives of a deceased who was on a fixed salary would not be entitled to the benefit of future prospects for the purpose of computation of compensation would be in apposite. It is because the criterion of distinction between the two in that event would be certainty on the one hand and staticness on the other. One may perceive that the comparative measure is certainty on the one hand and uncertainty on the other but such a perception is fallacious. It is because the price rise does affect a self-employed person; and that apart there is always an incessant effort to enhance one's income for sustenance. The purchasing capacity of a salaried person on permanent job when increases because of grant of increments and pay revision or for some other change in service conditions, there is always a competing attitude in the private sector to enhance the salary to get better efficiency from the employees. Similarly, a person who is self-employed is bound to garner his resources and raise his charges/fees so that he can live with same facilities. To have the perception that he is likely to remain static and his income to remain stagnant is contrary to the fundamental concept of human attitude which always intends to live with dynamism and move and change with the time.

Though it may seem appropriate that there cannot be certainty in addition of future prospects to the existing income unlike in the case of a person having a permanent job, yet the said perception does not really deserve acceptance. We are inclined to think that there can be some degree of difference as regards the percentage that is meant for or applied to in respect of the legal representatives who claim on behalf of the deceased who had a permanent job than a person who is self-employed or on a fixed salary. But not to apply the principle of standardization on the foundation of perceived lack of certainty would tantamount to remaining oblivious to the marrows of ground reality. And, therefore, degree-test is imperative. Unless the degree-test is applied and left to the parties to adduce evidence to establish, it would be unfair and inequitable. The degree-test has to have the inbuilt concept of percentage. Taking into consideration the cumulative factors, namely, passage of time, the changing society, escalation of price, the change in price index, the human attitude to follow a particular pattern of life, etc., an addition of 40% of the established income of the deceased towards future prospects and where the deceased was below 40 years an addition of 25% where the deceased was between the age of 40 to 50 years would be reasonable.

60. The controversy does not end here. The question still remains whether there should be no addition where the age of the deceased is more than 50 years. Sarla Verma thinks it appropriate not to add any amount and the same has been approved in Reshma Kumari. Judicial notice can be taken of the fact that salary does not remain the same. When a person is in a permanent job, there is always an enhancement due to one reason or the other. To lay down as a thumb Rule that there will be no addition after 50 years will be an unacceptable concept. We are disposed to think, there should be an addition of 15% if the deceased is between the age of 50 to 60 years and there should be no addition thereafter. Similarly, in case of self-employed or person on fixed salary, the addition should be 10% between the

age of 50 to 60 years. The aforesaid yardstick has been fixed so that there can be consistency in the approach by the tribunals and the courts.

61. In view of the aforesaid analysis, we proceed to record our conclusions:
(i) The two-Judge Bench in Santosh Devi should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in Sarla Verma, a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate Bench.
(ii) As Rajesh has not taken note of the decision in Reshma Kumari, which was delivered at earlier point of time, the decision in Rajesh is not a binding precedent.
(iii) While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.
(iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.
(v) For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paragraphs 30 to 32 of Sarla Verma which we have reproduced herein before.
(vi) The selection of multiplier shall be as indicated in the Table in Sarla Verma read with paragraph 42 of that judgment.

> ***(vii) The age of the deceased should be the basis for applying the multiplier.***
> ***(viii) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.***

34. Considering the ratio laid down in the case of Pranay Sethi (Supra) and further considering the fact that the deceased was not permanent job, prospective income is required to be added.

35. As far as the age of the deceased is concerned, the petitioner has stated that deceased was aged 34 years at the time of accident and in order to substantiate the say the petitioner has produced the IT Return computation vide Exh. 76 and in the column of date of birth it is mentioned as 12.06.1979 and whereas the said accident took place on 14.12.2013 and therefore the age of the deceased was 34 years 06 months 02 days and hence considering the same, the age of the deceased is held to be **34 years** at the time of accident and so, as per the ratio laid down in afore stated judgment, 40% addition is required to be made in the yearly income of the deceased. So, the income of the deceased comes to **Rs. 6,53,077/- (Rs. 4,66,884/- x 40%).**

36. Now, we have to deduct the living expenses of the deceased, however, as per the judgment of the Hon'ble Supreme Court given in the case of ***Sarla Verma v. Delhi Transport Corpn. (Supra),*** in para 14 it has been specifically stated that ***'Having considered several subsequent decisions of this court, we are of the view that where the deceased was married, the deduction towards personal and living expenses***

of the deceased should be one-third (1/3rd) where the number of dependent family members is 2 to 3; one-fourth(1/4th) where the number of dependent family members is 4 to 6; and one-fifth (1/5th) where the number of the dependent family members exceed six'. Here the deceased was married and petition has filed by the wife, minor daughter & son, mother of deceased as a dependents of the deceased and there is no genuine dispute raised by the other side hence, 1/4th amount is required to be deducted as personal expenses of the deceased. 1/4th amount of **Rs. 6,53,077/- is Rs. 1,63,269/-, hence, Rs. 4,89,808/- (Rs. 6,53,077/- less Rs. 1,63,269/-)** can be considered as pecuniary loss to the petitioners. In the judgment given in the case of ***Sarla Verma Vs. Delhi Transport Corpn. (Supra),*** the Hon'ble Supreme Court has restructured the multiplier column of Schedule - II and according to this restructured column of multiplier the person belonging to the age group 31 to 35 years is entitled for a **multiplier of 16**. Here, the deceased was aged about 34 years, and therefore, the petitioner is entitled for a multiplier of 16 and hence, if **Rs. 4,89,808/-** is multiplied by **16** then **Rs. 78,36,928/-** which can be considered as prospective loss of income to the petitioner because of death of the deceased.

<u>NON PECUNIARY LOSS</u>:

Non-pecuniary loss includes compensation under the head of loss of estate; loss of expectancy of life; pain, shock and suffering; etc.

The petitioners have asked the amount towards, loss of consortium; compensation to family; members for loss of love and affection; medical; attendant and transportation charges; funeral charges etc.

So far as the quantum of compensation under the conventional head is concerned, considering the ratio laid down in the case of ***National Insurance Co. Ltd. Vs. Pranay Sethi & Co. (supra),*** the amount is required to be awarded.

37. It is to be noted that as far as deceased is concerned, the said petition has been filed by the wife, minor daughter and minor son, mother of deceased as dependents of the deceased. It is to be noted that during the course of the petition, the mother of the deceased has passed away on 05.02.2022 but mother of the deceased is entitled to parental consortium as per the judgment of Hon'ble Apex Court and the right to consortium arises on the date of the accident, and this right has already accrued in favour of mother of deceased on the date of filing of the petition and hence, considering the afore stated proposition and as per the decision of the ***Hon'ble Apex Court in the case of National Insurance Co.Ltd. Vs. Pranay Sethi reported in AIR 2017 SC 5157,*** it would be just and proper that an amount of Rs. 44,000/- towards spousal consortium and love and affection to the petitioner no. 1 being wife of deceased and Rs. 44,000/- x 2 = Rs. 88,000/- towards filial consortium and love and affection to the petitioner No. 2 & 3 being the children of the deceased and Rs. 44,000/- towards parental consortium to the petitioner no. 4 being mother of deceased and the petitioners are entitled to Rs. 16,500/- towards loss of estate and Rs. 16,500/- towards funeral expenses.

38. So, under the afore stated conventional heads, in the petition, **Rs. 2,09,000/-** is granted to the petitioners.

39. In view of the above referred discussions, petitioners is entitled for following amount as compensation:

Sr. No.	Different heads	Amount(Rs.)
01.	As prospective loss of income.	78,36,928/-
02.	As loss of Estate, and as funeral expenses.	2,09,000/-
	Total Rs. **(Rounded off)**	80,45,928/- **80,45,930/-**

IN MACP No. 203/2015 (FATAL):

40. While discussing the Issue No.1, it is held that the driver of the Truck was solely negligent for happening of the accident and he is a wrong and his act is a tortuous act and therefore, the petitioners are entitled for compensation. In a fatal case arising out of a vehicular accident, compensation is broadly divided into **pecuniary loss and non-pecuniary loss.**

41. Normally, in a fatal accident case arising out of vehicular accident, the Tribunal is required to award compensation on two heads viz. **(1) Pecuniary loss, and (ii) Non-pecuniary loss.** Pecuniary loss consists of: Loss of income, expenditure incurred for funeral, medicines, treatment charges, if deceased has received treatment after the accident and before the death, transportation charges, etc., and non-pecuniary loss will include Pain, Shock and Suffering, if the deceased has survived for some time after the accident and before his death, loss of estate, loss of expectation of life, loss of consortium, etc.

PECUNIARY LOSS :

42. In the present case, as regards the income of the deceased is concerned, it has been pleaded that the deceased Divyangbhai was doing business of zari at Bharucha Wadi, Salabatpura and earning profit of Rs. 10,000/- per month. The petitioner has not produced any cogent and documentary evidence to prove the income of the deceased and has admitted the same in his cross-examination and hence, there is no evidence of income and so this Tribunal is left with no alternative than to consider the income of the deceased on notional basis.

43. It is cardinal principle of law that Tribunal cannot expect from poor persons or small business persons or from persons doing small job in private sector to maintain his/her books of account with respect to his monthly income and expenditure. In the case of ***Govind Yadav v/s National Insurance Com. Ltd., reported in 2012 (1) TAC 1 (SC) = 2012 ACJ 28 (SC)*** it has been held in para No.17 that when there is no proof of income, income of the deceased or injured petitioner shall be decided by taking into consideration prevalence minimum wages. The petitioner has not produced on record the prevalence minimum wages applicable for the year 2013, therefore, this Tribunal is not in a position to assess the monthly income of petitioner on the basis of the prevalence minimum wages. However, considering the fact that accident occurred in the year 2013 and the kind of work performed by the deceased along with the age, in my opinion, income of petitioner at **Rs. 6,000/- p.m.** can be assessed for computing actual loss and future loss of income.

44. The ratio laid down in the case of ***National Insurance Co. Ltd. Vs. Pranay Sethi and Ors.*** in Special Leave Petition (Civil) delivered on 31.10.2017 by the Hon'ble Supreme Court, is required to be considered and, it has been held that ....

> ***58. The seminal issue is the fixation of future prospects in cases of deceased who is self-employed or on a fixed salary. Sarla Verma (supra) has carved out an exception permitting the claimants to bring materials on record to get the benefit of addition of future prospects. It has not, per se, allowed any future prospects in respect of the said category.***
>
> ***59. Having bestowed our anxious consideration, we are disposed to think when we accept the principle of standardization, there is really no rationale not to apply the said principle to the self-employed or a person who is on a fixed salary. To follow the doctrine of actual income at the time of death and not to add any amount with regard to future prospects to the income for the purpose of determination of multiplicand would be unjust. The determination of income while computing compensation has to include future prospects so that the method will come within the ambit and sweep of just compensation as postulated Under Section 168 of the Act. In case of a deceased who had held a permanent job with inbuilt grant of annual increment, there is an acceptable certainty. But to state that the legal representatives of a deceased who was on a fixed salary would not be entitled to the benefit of future prospects for the purpose of computation of compensation would be in apposite. It is because the criterion of distinction between the two in that event would be certainty on the one hand and staticness on the other. One may perceive that the comparative measure is certainty on the one hand and uncertainty on the other but such a perception is fallacious. It is because the price rise does affect a self-employed person; and that apart there is always an incessant effort to enhance one's in-***

come for sustenance. The purchasing capacity of a salaried person on permanent job when increases because of grant of increments and pay revision or for some other change in service conditions, there is always a competing attitude in the private sector to enhance the salary to get better efficiency from the employees. Similarly, a person who is self-employed is bound to garner his resources and raise his charges/fees so that he can live with same facilities. To have the perception that he is likely to remain static and his income to remain stagnant is contrary to the fundamental concept of human attitude which always intends to live with dynamism and move and change with the time. Though it may seem appropriate that there cannot be certainty in addition of future prospects to the existing income unlike in the case of a person having a permanent job, yet the said perception does not really deserve acceptance. We are inclined to think that there can be some degree of difference as regards the percentage that is meant for or applied to in respect of the legal representatives who claim on behalf of the deceased who had a permanent job than a person who is self-employed or on a fixed salary. But not to apply the principle of standardization on the foundation of perceived lack of certainty would tantamount to remaining oblivious to the marrows of ground reality. And, therefore, degree-test is imperative. Unless the degree-test is applied and left to the parties to adduce evidence to establish, it would be unfair and inequitable. The degree-test has to have the inbuilt concept of percentage. Taking into consideration the cumulative factors, namely, passage of time, the changing society, escalation of price, the change in price index, the human attitude to follow a particular pattern of life, etc., an addition of 40% of the established income of the deceased towards future prospects and where the deceased was below 40 years an addition of 25% where the deceased was between the age of 40 to 50 years would be reasonable.

60. The controversy does not end here. The question still remains whether there should be

no addition where the age of the deceased is more than 50 years. Sarla Verma thinks it appropriate not to add any amount and the same has been approved in Reshma Kumari. Judicial notice can be taken of the fact that salary does not remain the same. When a person is in a permanent job, there is always an enhancement due to one reason or the other. To lay down as a thumb Rule that there will be no addition after 50 years will be an unacceptable concept. We are disposed to think, there should be an addition of 15% if the deceased is between the age of 50 to 60 years and there should be no addition thereafter. Similarly, in case of self-employed or person on fixed salary, the addition should be 10% between the age of 50 to 60 years. The aforesaid yardstick has been fixed so that there can be consistency in the approach by the tribunals and the courts.

61. In view of the aforesaid analysis, we proceed to record our conclusions:
(i) The two-Judge Bench in Santosh Devi should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in Sarla Verma, a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate Bench.
(ii) As Rajesh has not taken note of the decision in Reshma Kumari, which was delivered at earlier point of time, the decision in Rajesh is not a binding precedent.
(iii) While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.
(iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where

> ***the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.***
> ***(v) For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paragraphs 30 to 32 of Sarla Verma which we have reproduced herein before.***
> ***(vi) The selection of multiplier shall be as indicated in the Table in Sarla Verma read with paragraph 42 of that judgment.***
> ***(vii) The age of the deceased should be the basis for applying the multiplier.***
> ***(viii) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.***

45. Considering the ratio laid down in the case of Pranay Sethi (Supra) and further considering the fact that the deceased was not permanent job, prospective income is required to be added.

46. As far as the age of the deceased is concerned, the petitioner has stated that deceased was aged 27 years at the time of accident and in order to substantiate the say the petitioner has produced the copy of pan card of deceased vide Exh. 56 & 111 and in the column of date of birth it is mentioned as 09.06.1988 and whereas the said accident took place on 14.12.2013 and therefore the age of the deceased was 25 years 06 months 05 days and hence considering the same, the age of the deceased is held to be **26 years** at the time of accident and so, as per the ratio laid down in afore stated judgment, 40% addition is required to be made in the monthly income of the deceased. So, the monthly income of the deceased comes to **Rs. 8,400/- (Rs. 6,000/- x 40%).** Thus, the yearly income of the deceased is **Rs. 1,00,800/-**.

47. Now, we have to deduct the living expenses of the deceased, however, as per the judgment of the Hon'ble Supreme Court given in the case of ***Sarla Verma v. Delhi Transport Corpn. (Supra),*** in para 15 it has been specifically stated that in para 15 it has been specifically stated that ***'Having considered several subsequent decisions of this court, we are of the view that where the deceased was bachelor, the deduction towards personal and living expenses of the deceased should be one-half (1/2).*** Here the deceased was bachelor hence, 1/2 amount is required to be deducted as personal expenses of the deceased. 1/2 amount of Rs. 1,00,800/- is Rs. 50,400/-, hence, Rs. 50,400/- (Rs. 1,00,800/- less Rs. 50,400/-) can be considered as pecuniary loss to the petitioners. In the judgment given in the case of ***Sarla Verma Vs. Delhi Transport Corpn. (Supra),*** the Hon'ble Supreme Court has restructured the multiplier column of Schedule - II and according to this restructured column of multiplier the person belonging to the age group 26 to 30 years is entitled for a **multiplier of 17**. Here, the deceased was aged about 26 years, and therefore, the petitioners are entitled for a multiplier of 17, and hence, if Rs. 50,400/- is multiplied by 17 then **Rs. 8,56,800/-** which can be considered as a prospective loss of income to the petitioners because of the death of the deceased.

NON PECUNIARY LOSS:

Non-pecuniary loss includes compensation under the head of loss of estate; loss of expectancy of life; pain, shock and suffering; etc.

The petitioners have asked the amount towards, loss of consortium; compensation to family; members for loss of love and affection; medical; attendant and transportation charges; funeral charges etc.

So far as the quantum of compensation under the conventional head is concerned, considering the ratio laid down in the case of ***National Insurance Co. Ltd. Vs. Pranay Sethi & Co. (supra),*** the amount is required to be awarded.

48. It is to be noted that as far as deceased is concerned, the said petition has been filed by the mother and elder brother of deceased but elder brother of deceased is not entitled to consortium and hence, considering the afore stated proposition and as per the decision of the ***Hon'ble Apex Court in the case of National Insurance Co.Ltd. Vs. Pranay Sethi reported in AIR 2017 SC 5157,*** it would be just and proper that an amount of Rs.44,000/- towards parental consortium to the petitioner no. 1 being mother of deceased and the petitioners are entitled to Rs. 16,500/- towards loss of estate and Rs. 16,500/- towards funeral expenses.

49. So, under the afore stated conventional heads, in the petition, **Rs. 77,000/-** is granted to the petitioners.

COST OF MEDICINES & TREATMENT

50. The petitioners have stated that they have expended huge amount towards medicines as well as treatment and hospitalization and they have produced medical bills etc. totalling to Rs. 5,06,608/- vide Exh. 91 and has stated in his cross-examination that, deceased, Divyanbhai, passed away 6–7 months after the accident and he was taken treatment under various hospitals and was in coma and as discussed above had died due to the accidental injuries. So, considering the medical bills on record, **Rs. 5,06,608/-** is granted under the afore stated head.

TRANSPORTATION, ATTENDANT, SPECIAL DIET:

51. According to the petitioners, as per the affidavit, the deceased sustained injuries and was admitted in various hospitals. The deceased had suffered serious injuries which had resulted into permanent disability and he was in coma for long time and so looking to the age, kind of injuries and was the deceased being bedridden and was also admitted in the hospitals and so, attendant must have been required during the treatment and the petitioner must have also been required to incur expenses for transportation and must have also taken special diet for speedy recovery. Therefore, this Tribunal feels it fit that if the amount of **Rs. 25,000/-** is awarded under the afore stated head.

PAIN, SHOCK AND SUFFERING:

52. As per the affidavit, the deceased sustained serious injuries on various parts of his body and was admitted in various hospitals. The medical documents vide Exh. 91 produced on record are supporting the said say and the said documents clearly shows that the deceased has sustained serious injuries all over the body and he was gone into coma due to accidental injuries and after 6-7 months of the accident, he has passed away and which is not disputed by the other side and so, considering the afore stated facts along with the year of accident, the age of the deceased, he must have undergone considerable amount of pain, shock and suffering. Hence, I am of the opinion that the deceased should be awarded **Rs. 75,000/-** as compensation under the head of pain, shock and suffering.

The learned advocate for the petitioners has relied on citation serial no. 10 on page no. 14 of preceding part of this judgment which is pertaining to the pain, shock and suffering of the deceased and this tribunal has awarded the amount under the head of pain, shock and suffering hence, the said citation is applicable to the present case on hand.

53. In view of the above referred discussions, petitioners is entitled for following amount as compensation:

Sr. No.	**Different heads**	**Amount(Rs.)**
01.	As prospective loss of income.	8,56,800/-
02.	As loss of Estate, and as funeral expenses.	77,000/-
03.	Cost of medicines & treatment	5,06,608/-
04.	Pain, Shock and Suffering	75,000/-
05.	Special diet, attendant charges and transportation	25,000/-
	Total Rs. **(Rounded off)**	15,40,408/- **15,40,410/-**

The learned advocate for the Future General Insurance Company has relied on citation mentioned on page no. 15 of preceding part of this judgment and on going through the said citation, the facts are totally different than the case on hand and the said citation is not applicable to the present facts and circumstances on hand.

The learned advocate for the petitioners of MACP No. 203/2015 has relied on citations mentioned in page no.

14 & 15 of preceding part of this judgment. As far as the citation at serial no. 1 is pertaining to composite negligence but as per the above discussion, the accident had occurred due to sole negligency of driver of the truck hence, said citation are not applicable to the present case on hand. As far as the citation at serial no. 2 to 7 & 16 are pertaining to driver of the vehicle for non-involvement of the vehicle in the accident but as present case on hand, as per the discussion made above, the charge-sheet has been filed against the driver of the truck and as per the panchnama of truck it is established that the truck is involved in the present accident hence, driver, owner and insurance company of the truck are liable to pay compensation to the petitioners and the said citations are applicable to the present facts and circumstances on hand. As far the citation at serial no. 8 is pertaining to the interest and this tribunal has awarded interest 9% p.a. hence, the said citation is applicable to the present case. As far the citation at serial no. 9 is pertaining to assessing the income from the documentary evidence but in the present case, petitioners have not produced any evidence regarding the income of the decased hence, tribunal considered the income of the deceased on notional basis therefore, the said citation is not applicable to the present case. As far as the citations at serial no. 11 to 15 are pertaining to nexus between deceased died due to accidental injuries or natural death. On going through the said citations, this tribunal is also came to the conclusion regarding the nexus between deceased died due to accidental death or natural death hence, the said citations are applicable to the

present facts and circumstances on hand. As far as the citation at serial no. 17 is pertaining to issue of remarriage of wife, though she has remarried but on the date of accident she was the dependant/legal representative of the deceased and as a legal heir she is entitled to get compensation hence the said citation is applicable to the present case on hand.

The learned advocate for the petitioners of MACP No. 29/2015 has relied on citations mentioned in page no. 15 & 16 of preceding part of this judgment. As far as the citation at serial no. 1 & 2 is pertaining to driver of the vehicle for non-involvement of the vehicle in the accident but as the case on hand, as per the discussion made above, the charge-sheet has been filed against the driver of the truck and as per the panchnama of truck it is established that the truck is involved in the present accident hence, driver, owner and insurance company of the truck are liable to pay compensation to the petitioners and the said citation is applicable to the present facts and circumstances on hand. As far as the citation at serial no. 3 is pertaining to evidentary value of the police statement, the facts are totally diffrent than the present case on hand, hence, the said citation is not applicable to the present case. As far as the citation at serial no. 4 & 5 are pertaining to rash and negligent driving of the vehicle, the facts are totally diffrent than the present case on hand, hence, the said citations are not applicable to the present case. As far as the citation as serial no. 6, 8 & 11 are pertaining to amount of compensation under various heads and just compensation and the said citation is applicable to the present case on hand. As far as the citation at serial no. 7 is pertaining to income of the HUF, but the facts of the citation is totally diffrent than the present case on hand, hence, the said citation is not applicable to the present case. As far as the citation at serial no. 9 & 10 are pertaining non-examination of witness, but the facts of the citations are totally diffrent than the present case on hand, hence, the said citations are not applicable to the present case.

<u>Liability</u> :-

54. While deciding the issue No.1, this Tribunal has decided that the driver of opponent No. 1, i. e. the driver of the Truck bearing registration No. GJ.01.UU.8865 was solely negligent for happening of the said accident and the said Truck was under the ownership of the opponent no. 5 in MACP No.70/2014, opponent no. 2 in MACP No. 29/2015 & 203/2015 which is evident from the R. C. Book produced vide Mark – 49/14 & 53/8, perusing which it appears that the name of the opponent Ashraf Gulamnabi Mansuri is appearing in the column of ownership and as per insurance policy vide Mark-49/13, the name of the opponent is appearing in the column of ownership and no further dispute has been raised by him regarding he not being the owner of the Truck and on perusing the insurance policy produced vide Mark-49/13, it appears that said Truck was insured by opponent Future General Insurance Company and the period of validity is from 28.09.2013 to 27.09.2014, whereas said accident took place on 14.12.2013, therefore said insurance policy was in force and was active at the time of accident.

Therefore, as per the discussion made above opponents being the driver, owner and insurance company of Truck bearing registration no. GJ.01.UU.8865 are liable to pay compensation to the respective petitioners jointly & severally, therefore, I answer the Issue Nos. 2 & 3 in all the claim petitions accordingly.

INTEREST:

55. The petitioners have prayed for interest at the rate of 12% & 18% per annum. As regards the said contention is concerned, considering the judgment of the Hon'ble Constitutional Bench of the Hon'ble Apex Court in the case of ***Pranay Sethi (Supra)***, the Hon'ble Apex Court has allowed interest at the rate of 9% per annum. Hence, I hold that the petitioners are entitled for interest at the rate of **9% per annum** from the date of the petition till the realization of the amount. Hence, I pass the following final order:

O R D E R

1. The **MACP No. 70/2014, 29/2015 & 203/2015** are hereby **partly allowed** with proportionate costs and interest against the **opponents i.e. driver, owner and insurance company of truck no. GJ.01.UU.8865.**
2. **The opponents i.e. driver, owner and insurance company of Honda Jazz Car No. GJ.05.JC.8750 are hereby exonerated.**
3. The petitioners of **MACP No. 70/2014** do recover **Rs. 31,22,120/- (Rupees Thirty One Lacs Twenty Two Thousand One Hundred Twenty)** from the opponents, together with running interest at the rate of **9% p.a.** from the date of petition till realization of

the amount along with proportionate costs of the petition. After deductions mentioned below **25:25:25:25%** amount be given to the petitioner Nos. 1 to 4 respectively. The total share which will come on the part of petitioner no. 2 shall be invested as a Fixed Deposit in any nationalized bank of the choice of petitioner no. 1, being the natural guardian and next friend, for a period of five years or until the minor attains majority, whichever is later.

4. The petitioners of **MACP No. 29/2015** do recover **Rs. 86,88,650/- (Rupees Eighty Six Lacs Eighty Eight Thousand Six Hundred Fifty)** from the opponents, together with running interest at the rate of **9% p.a.** from the date of petition till realization of the amount along with proportionate costs of the petition. After deductions mentioned below **40:30:30%** amount be given to the petitioner Nos. 1 to 3 respectively. The total share which will come on the part of petitioner no. 2 & 3 shall be invested as a Fixed Deposit in any nationalized bank of the choice of petitioner no. 1, being the natural guardian and next friend, for a period of five years or until the minor attains majority, whichever is later.

5. The petitioner of **MACP No. 203/2015** do recover **Rs. 15,40,410/- (Rupees Fifteen Lacs Forty Thousand Four Hundred Ten)** from the opponents, together with running interest at the rate of **9% p.a.** from the date of petition till realization of the amount along with proportionate costs of the petition. After deductions mentioned below **75 : 25%** amount be given to the petitioner Nos. 1 & 2 respectively.

6. As far as the petitioners of all claim petitions except the minor petitioners are concerned, after above deductions, **70%** be deposited in any nationalized bank situated near the residence of the said respective petitioners for a period of 5 years and the remaining **30%** amount be paid by RTGS or NEFT directly in the bank account of the said respective petitioners after due verification.

7. The opponents are hereby directed to comply with the provisions of Section 194-A of the Income Tax Act and deposit the afore stated amount of award after deducting the amount of interim compensation, if any paid u/s 140 of M. V. Act directly by RTGS or NEFT to the following bank account of this tribunal within 30 days from the date of this order;

Account Name :-	Motor Accident Claims Tribunal, Navsari.
Bank Name :-	State Bank of India
Account Number :-	40756379884
IFSC :-	SBIN0000439
MICR :-	396002061

The opponents shall instruct their bank to remit the payment with the following information.

MACP No.	
Claims Tribunal Name, Place	
Date of Award	
Compensation Amount	
Income Tax Deducted at Source	
Bank Transaction Refer-	

ence No. / Unique Transaction Reference (UTR) No.	
Name of Bank	
Name of Insurance Co.	

8. On such deposit being made, the opponents shall submit a letter to the office of the Claims Tribunal, Navsari enclosing a copy of the bank advice in the prescribed format as above.

9. The opponents shall make such deposit, shall also send a copy of the aforesaid payment advice to the Claims Tribunal concerned and serve the copy of the said on the petitioners or her/his advocate as the case may be.

10. In so far as tax deduction at source is concerned, Form 16-A of the IT Act should be provided to the petitioners on whose behalf the deduction has been made so as to enable him to seek refund of the tax deducted if any.

11. Deficit Court Fees Stamp, if any, be recovered from the awarded amount.

12. Opponents shall bear their own cost as well as pay the cost to the petitioners.

13. The copy of this Judgment and the award to be drawn shall be uploaded on the site.

14. The copy of this Judgement be kept in the cognate matter also.

15. Award be drawn accordingly.

16. Investments, as above, shall be encumbered with following terms and conditions:

- The said amount shall be invested with any of the nationalized Bank of the choice of the petitioners in Fixed Deposit Receipt Account.
- The interest on the above Fixed Deposit Receipt Account as and when it becomes payable monthly, quarterly, half-yearly or annually, as agreed to, shall be paid to the petitioners.
- No facility by way of loan, over-draft or cash credit shall be available on the above investment and the Bank shall not allow any such transaction, encumbering the investment or on the basis of the security of the same.
- The Bank shall not permit the petitioners to withdraw the said amount prior to its maturity or without prior permission of this Tribunal.
- The Bank shall intimate to this Tribunal the particulars of the investment viz., number of Fixed Deposit Receipt, name of holder and the date of maturity immediately after issuance of Fixed Deposit Receipt in this case.
- At the end of the period aforesaid, the Bank shall pay the principal amount to the payee the concerned petitioners.

Pronounced in open Court today on this 23rd day of April, 2026.

Sd/-

Date: 23-04-2026 **(Pratik Jaysukhbhai Tamakuwala)**
Place: Navsari. Chairman, M.A.C.T. (Main),
Navsari.
Code No.GJ00581.

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