GJPM010027172023	Received on :	17/07/2023		
	Registered on :	31/08/2023		
	Decided on :	**07/08/2026**		
	Duration :	02	11	07
		Years	Months	Days

IN THE MOTOR ACCIDENT CLAIMS TRIBUNAL (Main)
PANCHMAHALS AT GODHRA

MACP No.281 of 2023

Applicants:-
Legal heirs of deceased Prabhatbhai Fatabhai Pateliya

1. Baluben Prabhatbhai Pateliya
   Age: 50 Years, Occupation: H.Hold Work,

2. Satishkumar Prabhatbhai Pateliya
   Age: 31 Years, Occupation: Labour work,
   Both R/o.: Kauchiya, Station Faliyu,
   Ta. Lunawada, Dist. Mahisagar.

Versus

Opponents:-

1. Ishvarbhai Laxmanbhai Tadvi
   Age: Adult, Occupation: Owner,
   Res.: Nasirpur, Tadvi faliyu,
   Ta. Godhra, Dist. Panchmahals.
   [Owner of Motorcycle No.GJ-17-CD-6303]

2. Reliance General Insurance Co. Ltd.
   Insurer, Office at 3rd floor, Zodiac Avenue,
   Opp. Mayor Bunglow, Near SBI Bank,
   Law Garden, Navrangpura, Ahmedabad.
   [Insurer of Motorcycle No.GJ-17-CD-6303]

* * *

Appearance:
Mr. D. S. Parmar, Ld. advocate for the Applicants.
Mr. R. S. Pallivar, Ld. Advocate for the opponent no.1.
Mr. A. B. Raval, Ld. advocate for the opponent no.2.

: J U D G M E N T :

01. The present Claim Petition has been filed by the claimants under sec.166 of the Motor Vehicle Act, 1988. (hereinafter referred to as the 'Act') claiming relief of compensation of Rs.20,00,000/- along with interest & costs; due to death of deceased Prabhatbhai Fatabhai Pateliya in the vehicular accident.

02. The brief fact of the present claim petition are as under:

That on dtd.25.04.2023, at about 10:00 Hours, the deceased Prabhatbhai Fatabhai Pateliya was standing on the side of the road for urinating & snacks, situated at Village Popatpura, near Khodiyar Mandir. At that time, the opponent No.1, came by driving Motorcycle No.GJ-17-CD-6303 [Hereinafter called as "offending vehicle"] in rash & negligent manner and dashed with deceased Prabhatbhai Fatabhai Pateliya. Thus, the accident was occurred. In the said incident, Prabhatbhai Fatabhai Pateliya sustained fatal injuries and then died due to accidental injuries. The said incident was registered as an offense in Godhra Town A Division Police Station, *vide* I-CR No.11207025230277/2023.

03. As per the pleading of the claimants, at the time of accident, the deceased was 51 years old and was earning Rs.9,000/- p.m. by doing masonry work. It is further averred that, out of the said income, deceased was maintaining and supporting his family. But, due to sudden death of deceased, their source of income has discontinued and thereby, the claimants have suffered dependency loss. In view of above, the applicants have claimed total compensation of Rs.20,00,000/- under conventional & non convention heads like loss of future prospects, loss of consortium and funeral expenses, etc.

04. Upon the presentation of the petition, summons/notices of the petition were duly served to the opponents. Thereafter, the opponent No.1 has filed written statement vide Exh.-16 and has denied the fact of petition. The opponent No.1 has contended that the applicants may be directed to prove the facts as averred in the petition by cogent documentary evidence. The opponent No.1 has denied the income, injuries sustained by the applicant and fact of accident. It is contended that if the Tribunal comes to conclusion that the opponent No.1 is liable then the opponent No.2 being Insurer of offending vehicle, is liable to pay compensation if any. Lastly, the opponent No.1 has prayed to dismiss the claim petition. The opponent No.2.-Insurance Company of offending vehicle, has filed written statement at Exh.-25. In the written statement, the opponent No.2 has generally denied the *averments* made in the claim petition. The opponent No.2 has mainly denied the age, income, and

injuries sustained by the deceased as well as rash & involvement of offending vehicle at the time of accident. It is contended that the driver of offending vehicle didn't hold valid & effective driving license. Upon these defences, the opponent No.2 has prayed to dismiss the petition with costs.

05. From the pleadings which has appeared on record following **ISSUES** are framed for determination of this claim petition at Exh.-18:

1. Whether it is proved that the deceased sustained injuries and died on account of rashness or negligence in driving on the part of the driver/s of the vehicle/s involved in the accident?

   Answer: Affirmative.

2. What amount, if any, the claimants are entitled to by way of compensation and from whom?

   Answer: As per final order.

3. What order and award?

   Answer: As per final order.

06. **Evidence from the applicant side.**

-// **ORAL EVIDENCES** \\-

Sr. No.	Particular	Exh. No.
1.	Deposition/Affidavit of applicant No.1.	19

-// **DOCUMENTARY EVIDENCES** \\-

Sr. No.	**Description of Documents**	**Exh. No.**
1.	Copy of aadhar card of deceased.	27
2.	Copy of index (*Suchipatra*)	29
3.	Copy of complaint.	30
4.	Copy of panchnama.	31
5.	Copy of Inquest panchnama.	32
6.	Copy of P.M. Report.	33
7.	Copy of R.C. Book of offending vehicle.c	34
8.	Copy of chargesheet.	35

07. The evidence of opponents.

-// **ORAL EVIDENCES** \\-

Sr. No.	**Particular**	**Exh. No.**
1.	Deposition/Affidavit of opponent No.1.	37
2.	Deposition of Legal Manager of Insurance Company.	41

-// **DOCUMENTARY EVIDENCES** \\-

Sr. No.	**Particular**	**Exh. No.**
1.	Copy of Insurance Policy of offending vehicle with terms & conditions.	42
2.	Schedule-II Request form for Video Conference.	43

I have heard arguments advanced by ld. Advocates of both the parties. Perused the written arguments filed by the opponent No.2. Perused the record of this petition.

:REASONS FOR ISSUES:

Issue No.1:

Negligence:

08. It is settled position of law that, while deciding the point of negligence, the Tribunal has to borne in mind that, aspect of negligence in claim petition under Section 166 of the Motor Vehicles Act is to be decided only on the touch stone of preponderance of probability and not beyond the reasonable doubts. The above position of law is laid down by the Hon'ble Apex Court in the following cases:

(i) Bimladevi vs. H.R.T.C., AIR 2009 SC 2819.

(ii) Parmeshwari Devi vs. Amirchand, (2011)11 SCC 635.

Looking to the citation, which is the case before ***hon'ble Supreme Court*** between ***Surender Kumar and another v/s Manoj Bisla (Dr.) and others, 2012 A.C. 180 (SC)***, wherein it is held that in claim petition filed under sec.166 of the Act, the burden lies on the claimants to establish negligence of the driver or the owner of the vehicle concerned but if the petition is filed under sec.163 then the compensation is to be awarded in terms of schedule without calling upon the victim or his dependents to establish any negligence or default on part of driver or owner of vehicle

09. To prove the negligence in this case, the applicant No.1, widow of the deceased has filed her examination in chief at Exh.23. She has deposed and reiterated the averments of the accident as mentioned in the claim petition. The claimant has deposed that the accident has occurred due to rash & negligent driving on the part of opponent No.1 and deceased has died due to accidental injuries. The say of claimant, is supported by the documentary evidence viz complaint, panchnama, Inquest panchanam & P.M. Note. It reveals from the cross-examination of applicant, who was not an eye witness of incident.

Herein, the opponent No.1 i.e. the owner of offending, has been examined vide Exh,-37. The opponent No.1 has deposed that the applicants may be directed to prove the facts as averred in the petition by cogent documentary evidence. The opponent No.1 has denied the fact of accident. It is contended that if the Tribunal comes to conclusion that the opponent No.1 is liable then the opponent No.2 being Insurer of offending vehicle, is liable to pay compensation if any. During cross-examination, the opponent No.1 has admitted that he is an owner of motorcycle No.GJ-17-CD-6303. Further, the motorcycle was in possession of his uncle's son Tadvi Dineshbhai. It reveals from the evidence that complaint filed against the driver of offending vehicle, he was arrested in the offence and chargesheet is also filed against him. The driver of offending vehicle has no driving license to drive motorcycle. Moreover, looking to the complaint it is registered against the driver of Motorcycle No.GJ-17-CD-6303. Panchas have identified the place of incident vide Exh.30. No other vehicle was involved in this incident. It is not disputed that the deceased was standing on the road at the time of accident. It is pertinent to note here that after thorough investigation, Investigating Officer has filed chargesheet against the driver of offending vehicle. Copy of same is produced on record vide Exh.-35. The driver of the offending vehicle has not entered in to witness box to refute the contentions raised by the claimant. So, considering above all aspects, this tribunal is of the view that the accident has occurred due to sole rash and negligent driving on the part of driver of Motorcycle No.GJ-17-CD-6303. Hence, issue No.1 is replied in **"affirmative"**..

Issue Nos.2 & 3:

Quantum of Compensation:

10. Now when it is proved that the accident in question was occurred due to sole negligence of the driver of offending vehicle and the deceased mentioned herein has died due to injuries received in said accident then the next question will be that what would be the amount of compensation which is to be awarded to his legal heirs and representatives. In order to arrive what should be the amount of compensation then as per the provisions of sec.168 of the M. V. Act, it is prime duty bestowed on the Tribunal that claimants get "just compensation". For that aspect the Tribunal has to decide factors such as dependency loss, age & income of deceased on the date of accident. So it is duty of the Tribunal to award just, equitable and fair compensation to the claimant. The expression 'compensation' is comprehensive term which includes a claim for damages. The hon'ble Apex Court in ***Sarla Verma & Ors. v/s Delhi Transport Corporation & Anr.*** reported in ***2009 A.C.J. 1298,*** has discussed as under:

> *"..... just compensation is adequate compensation which is fair and equitable, on the facts and circumstances of the case, to make good the loss suffered as a result of the wrong, as far as money can do so, by applying the well settled principles relating to award of compensation. It is not intended to be a bonanza, largesse or source of profit."*

Income:

11. The claimant has deposed that at the time of accident, the deceased was earning Rs.9,000/- per month by doing masonry work. The claimant has not produced any reliable or cogent evidence to prove the income & occupation of deceased at the time of incident. Under these circumstances, the Tribunal is empowered to presume the monthly income of the deceased at the time of accident. It is also cardinal principle of law that when there is no proof of income of victim, his/her monthly income can be assessed on the basis of the prevailing minimum wages. In the case of ***Govind Yadav v/s the New India Insurance Co. Ltd,*** reported in ***2012 ACJ 28 (SC)*** and in the judgment of ***Meena Pawaia and Ors. v/s Ashraf Ali and Ors.*** reported in ***2021(13) Scale 733 (2021 SCC Online SC 1083)***, the hon'ble Supreme Court has impressed upon the Tribunal to keep in mind the rate of minimum wages for counting income of the victim of the road accident, if no proper data of the income is produced or lead in the evidence. So as per principle laid down by the Hon'ble Supreme Court in the above referred case the rate of minimum wages for such year is required to be taken into consideration, which was about Rs.11,466/- per month under the category of **unskilled workers**. The applicant herself deposed that the deceased was earning Rs.9,000/- p.m. at the time of accident. Therefore, the monthly income of deceased at the time of accident on basis of minimum wages is to be considered as **Rs.9,000/-** p.m.

Age:

12. It is the case of the applicant that the deceased was 51 years old at the time of occurrence of accident. The applicant has produced aadhar card of deceased vide Exh-31, which show birth date of deceased "01.01.1972". Thus, it is established that the deceased was 51 years old at the time of accident. Hence, this Tribunal has to consider the age of deceased between age group of 51-55 years at the time of accident.

<u>Future Prospectus</u>:

13. Further it is required to refer the citation which is the case before ***hon'ble Supreme Court of India,*** between ***National Insurance Company Ltd. v/s Pranay Sethi and Ors., SLP (Civil) No.25590/2014,*** decided on ***dtd.31.10.2017,*** *wherein in para-61*, it is held that when deceased was aged between 50-60 years and was self employed or on a fixed salary then an addition of 10% amount is required to be added in his income as future prospectus. Herein the deceased was aged about 51 years and was a self employed person, so 10% amount is to be added as future prospectus. Hence, by adding 10% of Rs.9,000/- i.e. Rs.900/- net monthly amount as income along with future prospectus for deciding compensation comes to Rs.9,900/- p.m. i.e. Rs.1,18,800/- p.a.

14. Herein the case on hand, the deceased was married and claimant are two. So, as per decision of ***hon'ble Apex Court*** in case of ***Sarla Verma (supra)***, that where the deceased was married and dependent are upto three, then the deduction towards personal and living expenses of the deceased should be 1/3 amount is required to be deducted as personal expenditure of the deceased. Thus, 1/3 amount of Rs.1,18,800/- comes to Rs.39,600/-, and after deducing same, net amount which falls in the share of applicants to **Rs.79,200/-** p.a.

<u>**Multiplier**</u>:

15. In pursuance to the above discussion and principle laid down by ***hon'ble Supreme Court*** between ***Sarla Verma & Ors. v/s Delhi Transport Corporation & Anr.*** reported in ***2009 A.C.J. 1298,*** and considering age of deceased between 51 to 55 years at the time of accident, the multiplier of "11" is applicable in the present case.

Dependency loss:

16. In view of the above referred discussion, the claimants are entitled for following amount under the head of future loss of income: (Rs.79,200 x 11 multiplier)= **Rs.8,71,200/-.**

Loss of Estate and Funeral Expenses:

17. As per the decision of Hon'ble Apex Court in case of ***National Insurance Co. Ltd. v/s Pranay Sethi (Supra)***, the claimants would be entitled for the amount of Rs.15,000/- each, under head of loss of estate and funeral expense. It is pertinent to note that as per the aforementioned judgment, 10% rise is also required to be awarded towards the conventional heads of loss of estate, loss of consortium and funeral expenses, for every 3 years. Therefore, this Tribunal thinks it fit to awards **Rs.16,500/-** towards loss of estate & **Rs.16,500/-** towards funeral expense to the claimants.

Consortium:

18. It is pertinent to note that, as a result of this accident, the

claimant No.1 has lost her husband and the claimant No. 2 has lost his father and thereby have lost their future support. At this juncture, reliance is required to be placed on the ruling of ***Magma General Insurance Co. Ltd. v/s Nanu Ram Alias Chuhru Ram & Ors., Civil Appeal No. 9581 of 2018, decided on 18th September, 2018,*** wherein the Hon'ble Apex Court in para No.8.7 of the judgment has observed that:

> *8.7 A Constitution Bench of this Court in Pranay Sethi (supra) dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is Loss of Consortium. In legal parlance, " consortium" is a compendious term which encompasses 'spousal consortium', 'parental consortium', and 'filial consortium'..............................Parental Consortium is awarded to children who lost their parents in motor vehicle accidents under the Act.............................. The amount of compensation to be awarded as consortium will be governed by the principles of awarding compensation under 'Loss of Consortium' as laid down in Pranay Sethi (supra).*

19. In the judgment of ***Pranay Sethi (supra)*** it is held that the amount of consortium to be awarded to each dependent should be Rs.40,000/- and ten percent rise is to be given at every three years. The spousal, filial and parental consortium was awarded as such also by hon'ble Supreme Court in case of ***Smt. Anjali & Ors. (supra)***. Therefore in the present case, this Tribunal deems it appropriate to award **Rs.44,000/-** to the claimant No.1 being widow of deceased towards spousal consortium and **Rs.44,000/-** to the claimant no.2 being child of the deceased, towards **parental consortium**. Thus, the claimants are entitled for following amount as compensation:

Rs. 8,71,200/-	Loss of dependency.
Rs. 88,000/-	Consortium
Rs. 16,500/-	Funeral Expenses.
Rs. 16,500/-	Loss of Estate.
Rs. 9,92,200/-	**Total Compensation.**

Liability:

20. It is argued by the ld. Counsel on behalf of Insurance Company that the I.O. has filed charge-sheet u/Sections Section 3 & 181 of the M.V.Act against the opponent No.1. Thus, the opponent No.1 i.e. the driver of offending vehicle was not holding driving licence to drive offending vehicle at the time of accident. The chargesheet under Section 3 & 181 of the M. V. Act is also filed against the accused/opponent No.1 by the Investigating Officer, which is suggests that at the time of accident, the driver of offending vehicle was not having any valid & effective driving license to drive the offending vehicle. The present accident was took place after the amendment in the M.V.Act. So Section 150(4) of the M. V. Act is attracted in this case, that is why, the Insurance Company is not liable for any compensation.

20.1 It is not disputed that in the present case, the deceased was third party who met with the accident, due to the negligency of the opponent No.1 and the deceased/occupant has died. It is also not disputed that the opponent No.1 was sole negligent for this accident and the deceased/claimant is the third party should not be deprived his amicable claim of compensation merely on the ground of breach of terms & conditions of policy.

20.2 Of course, in the present case, there is a breach of condition of the policy as the opponent No.1 was not having valid & effective driving license to drive the vehicle at the time of accident. In my view, it is a duty of the State to determine that no person shall drive the vehicle without any valid & effective driving license which endangering human life. Only by making the amendment in law, like Section 150(4) of the M. V. Act, the State cannot escape from its pious liability/responsibility to protect the rights of the law abiding citizens. For the wrong acts of any person, the third person or the law abiding citizen cannot suffer. The State shall develop the mechanism to ascertain that no person shall illegally drive the vehicle on the road. From the act of any wrong door the legitimate claims of compensation who follow the rules & regulation cannot deprive their rights merely on the technical ground.

20.3 The Insurance Companies are established under the Insurance Act, 2019 and regulating and licensing by

Insurance Regulatory and Development Authority of India. Section 147 of the M.V. Act mandates that the valid motor insurance policy must be issued by the authorized insurer and cover liability for death or bodily injury to any person, including the owner of goods or their representative, or damage to any third party, property arising from the use of vehicle in a public place.

The concept of "Pay & Recover":

- Victim protection is the core concept is to safeguard the victims of motor accidents specially third party. They are innocent parties who should not suffer due to the insured's failure to comply with policy conditions.

- Indian Law requires vehicle owners to have compulsory third party insurance to cover potential third party risks. This ensures a responsible entity is available to compensate victims.

- Always a breach of policy conditions, like over loading or driving without valid license, without permit etc., creates a contractual dispute between the Insurer and the insured. In that cases the principle of "Pay & Recover" is comes into picture, which prevent victims from suffering financial hardship due to technical breaches of policy conditions by insured party.

- The Insurance Companies have the financial capacity to pay the compensation promptly, which is crucial for victims timely relief and Insurance Companies are also having adequate setup to recover the awarded amount from the insured. It is equitable remedy to balance the interest of the victims, the Insurer and the owner.

- This ensure that accident victims are not denied timely compensation due to contractual dispute between the insured and insurer. The principle is applies almost exclusively in cases of mandatory third party motor insurance, which priorities the protection of innocent road accident victims. Compulsory third party insurance scheme is based on the social welfare objective of providing timely and effective relief to victims of motor vehicle accidents. The Doctrine balances the rights of the third party victim and the insurer, while the insurer's right to pursue recovery from the insured for a policy breach is preserved.

20.4 Further, in the case of **Sohan Lal Passi vs P. Sesh Reddy & Ors on 17 July, 1996 1996 SCC (5) 21, JT 1996 (6) 728, AIR 1996 SC 2627,** the Hon'bel Apex Court, has held that:

> This Court in the case of Kashiram Yadav and Another. vs. Oriental Fire and General Insurance Co. and Others, (1989) 4 SCC 128 reiterataed the views expressed in Skandia Insurance Co. Ltd. vs. Kokilaben Chandravadan (supra) while referring to that case it was said:
>
> ".......There the facts found were quite different. The

vehicle concerned in that case was undisputedly entrusted to the driver who had a valid licence. In transit the driver stopped the vehicle and went to fetch some snacks from the opposite shop leaving the engine on. The ignition key was at the ignition lock and not in the cabin of the truck. The driver had asked the cleaner to take care of the truck. In fact the driver had left the truck in care of the cleaner. The cleaner meddled with the vehicle and caused the accident. The question arose whether the insured (owner) had committed a breach of the condition incorporated in the certificate of insurance since the cleaner operated the vehicle on he fatal occasion without driving licence. his Court expressed the view that it is only when the insured himself entrusted the vehicle to a person who does not hold a driving licence, he could be said to have committed breach of the condition of the policy. It must be established by the Insurance Company that the breach is on the part of the insured. Unless the insured is at fault and is guilty of a breach of the condition, the insurer cannot escape from the obligation to indemnify the insured. It was also observed that when the insured has done everything within his power inasmuch as he has engaged the licensed driver and has placed the vehicle in his charge with the express or implied mandate to drive himself, it cannot be said that the insured is guilty of any breach.

We affirm and reiterate the statement of law laid down in the above case. We may also state that without the knowledge of the insured, if by driver's acts or omission others meddle with the vehicle and cause an accident, the insurer would be liable to indemnify the insured. The insurer in such a case cannot take the defence of a breach of the condition in the certificate of insurance."

We are in respectful agreement with the view expressed in the case of Skandia Insurance Co. Ltd. Vs Kokilaben Chandravadan (supra).

> As in the facts of the present case, the appellant shall be deemed to be liable to pay compensation applying the principle of vicarious liability because the accident took place when the act authorised was being performed in a mode which may not be proper but was directly connected with in the course of employment, sub-section (1) of section 96 of the Act shall come into play and the insurance company shall be deemed to be the judgment debtor, so far claim made by the heirs and legal representatives of the deceased is concerned. are Accordingly, the appeals are allowed and the orders of the claims Tribunal and the High Court are modified where only the appellant has been held to be liable to pay the compensation and the respondent insurance company has been absolved of the liability. The respondent insurance company shall be jointly and severally liable to pay the compensation to the claimants. There shall be no order as to costs.

Moreover, in the case of **Shamanna And Another v. Divisional Manager, Oriental Insurance Company Limited And Others (2018 INSC 678)** adjudicated by the Supreme Court of India on August 8, 2018, revolves around the application and extent of the "pay and recover" doctrine in third-party insurance claims under the Motor Vehicles Act, 1988. The appellants, Shamanna and another party, sought compensation for the wrongful death of Shankareppa Pattar due to a vehicular accident caused by a negligently driven jeep. The central issue was whether the insurance company should both pay the compensation to the claimants and recover the same amount from the vehicle owner, thereby enforcing the "pay and recover" mechanism.

20.5 So, looking to the concept of "pay & recover" principle, mere omission of proviso attached to Sub-Section (4) of Section 149 of the Motor Vehicle Act, after it's replacement by Section 150 of the Motor Vehicle (Amendment) Act. Neither takes away liability of insurer to pay claimants nor its right to recover the said amount from the Insurer/owner. The law to this effect remains intact and unaffected by amendment Act, 2019 and hence insurer shall continues to indemnify the owner's risk in relation to accident taking place after 1st April, 2022 and "pay & recover" principle will still continue to govern the field advancing social object of the statute protecting third party interest. The Principle of law laid down by the Hon'ble Supreme Court **in the case of National Insurance Col Ltd. Vs. Swaran Singh & others JT 2004(1) SC 109** has not lost its significance and binding effect despite omission of proviso.

20.6 A Bench of three Judges of Honorable Apex Court in **National Insurance Company Limited vs. Swaran Singh 2004 ACJ 1 (SC)** in an exhaustive and elaborate judgment dealt with the question of violations of terms and condition of Insurance policy issued under the Act in a relation to fake or Invalid license of the driver. After referring to the earlier case law on the subject and critical analysis of the relevant provisions and case law, it was held in para 102 as under:

(I) "Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.

(ii) An insurer is entitled to raise a defence in a claim petition filed under Section 163-A or section 166 of the Motor Vehicles Act, 1988, inter alia, in terms of section 149 (2) (a) (ii) of the said Act.

(iii) The breach of policy condition, e.g., disqualification of the driver or invalid driving license of the driver, as contained in sub-section (2) (a) (ii) of section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving license or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) The insurance companies, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish „breach‟ on the party of the owner of the vehicle; the burden of proof where for would be on them.

(v) The court cannot lay down any criteria as to how the said burden would be discharged, in as much as the same would depend upon the facts and circumstances of each case.

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid license by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards the insured unless the said breach or breaches of the condition of driving license is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply „the rule of main purpose‟ and the concept of fundamental breach‟ to allow defences available to the insurer under section 149 (2) of the Act.

(vii) The question as to whether the owner has taken reasonable care to find out as to whether the driving license produced by the driver (a fake one or otherwise) fulfils the requirements of law or not will have to be determined in each case.

(viii) If a vehicle at the time of accident was driven by a person having a learner‟s license, the insurance companies would be liable to satisfy the decree.

(ix) The Claims Tribunal constituted under Section 165 read with section 168 is empowered to adjudicate all claims in respect of the accidents involving death or bodily injury or damage to property of third party arising from use of motor vehicle. The said power of the Tribunal is not restricted to decide the claims, inter se, between claimant or claimants on one side and insured, insurer and driver on the other. In the course of adjudicating the claim for compensation and to decide the availability of defence or defences to the insurer, the Tribunal has necessarily the power and jurisdiction to decide disputes, inter se, between insurer and the insured. The decision rendered on the claims and disputes, inter se, between the insurer and insured in the course of adjudication of claim for compensation by the claimants and the award made thereon is enforceable and executable in the same manner as provided in section 174 of the Act for enforcement and execution of the award in favour of the claimants.

(x) Where on adjudication of the claim under the Act the Tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of section 149 (2) read with sub-section (7), as interpreted by this court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the Tribunal. Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the Tribunal to the Collector in the same manner under section 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by sub section (3) of section 168 of the Act, the insured fails to deposit the amount awarded in favour of the insurer with thirty days from the date of announcement of the award by the Tribunal.

(xi) The provisions contained in sub-section (4) with the proviso there under and sub-section (5) which are intended to cover specified contingencies mentioned therein to enable the insurer to recover amount paid under the contract of insurance on behalf of insured can be taken recourse to by the Tribunal and be extended to claims and defences of insurer against insured by relegating them to the remedy before regular court in cases where on given facts and circumstances adjudication of their claims inter se might delay the adjudication of the claims of the victims."

20.7 In pursuance to the same it is required to refer the citation which is the case before ***Hon'ble Apex Court*** between

Singh Ram v/s Nirmala, Civil Appeal No.2103 of 2018 in ***SLP (C) No.22630 of 2015*** decided on ***dt.06.03.2015***, wherein it is required to refer some paras of the same which are as under:

> **6.** Before we advert to the decision in Swaran Singh (supra) a brief reference to the facts as they emerge from the decision of the Tribunal is necessary. Initially before the Tribunal the appellant produced a driving licence issued by the Motor Vehicles Department, Agra (Exh.R-1). The driving licence was found to be fake. The statement of the Senior Assistant in the office of the RTO, Agra was that Exh.R-1 had not been issued by the office. **The Tribunal noted that the witness had proved the report (Exh.R-2) issued by the department and concluded that the licence was fake**. Faced with this situation, the appellant attempted to prove that he held a valid driving licence issued by the licencing authority at Jagadhri to drive a motor cycle. The Tribunal rejected the application filed by the appellant for producing additional evidence. The Tribunal noted that even otherwise, the licence which was issued by the licencing authority, Jagadhri for a tractor and car was valid only until 29 August 2009. The accident took place on 22 March 2010. The licence was renewed on 28 November 2011 more than two years after it had expired. On these facts, **the Tribunal observed that on the date of the accident, the appellant was not holding a valid and effective driving licence nor was there any evidence to indicate that the licence was sought to be renewed as required in law, within 30 days of its expiry**. **The Tribunal also observed that the appellant did not hold a valid licence to drive a motor cycle**. On these grounds, the insurer was absolved. **The High Court has confirmed the direction of the Tribunal to pay and recover**.
>
> **7.** In Swaran Singh (supra), this Court held that the holder of a driving licence has a period of thirty days

on its expiry, to renew it:

"45. Thus, a person whose licence is ordinarily renewed in terms of the Motor Vehicles Act and the Rules framed thereunder, despite the fact that during the interregnum period, namely, when the accident took place and the date of expiry of the licence, he did not have a valid licence, he could during the prescribed period apply for renewal thereof and could obtain the same automatically without undergoing any further test or without having been declared unqualified therefor. Proviso appended to Section 14 in unequivocal terms states that the licence remains valid for a period of thirty days from the day of its expiry.

46. Section 15 of the Act does not empower the authorities to reject an application for renewal only on the ground that here is a break in validity or tenure of the driving licence has lapsed, as in the meantime the provisions for disqualification of the driver contained in Sections 19, 20, 21, 22, 23 and 24 will not be attracted, would indisputably confer a right upon the person to get his driving licence renewed. In that view of the matter, he cannot be said to be delicensed and the same shall remain valid for a period of thirty days after its expiry." The following conclusion has been recorded in summation in the judgment::

"(iii) The breach of policy condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. **To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver or one who was not**

disqualified to drive at the relevant time.

(iv) Insurance companies, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish "breach" on the part of the owner of the vehicle; the burden of proof wherefor would be on them.

(v) The court cannot lay down any criteria as to how the said burden would be discharged, inasmuch as the same would depend upon the facts and circumstances of each case.

(vi) **Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards the insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident**. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insurer under Section 149(2) of the Act.

(vii) The question, as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver (a fake one or otherwise), does not fulfil the requirements of law or not will have to be determined in each case".

8. In the present case it is necessary to note, as observed by the Tribunal, that the owner did not depose in evidence and stayed away from the witness box. He produced a licence which was found to be fake. Another licence which he sought to produce had already expired before the accident and was not renewed within the prescribed period. It was renewed well after two years had expired. **The appellant as owner had evidently failed to take reasonable care**

> **(proposition (vii) of Swaran Singh) since he could not have been unmindful of facts which were within his knowledge**.
>
> 9. In the circumstances, **the direction by the Tribunal, confirmed by the High Court, to pay and recover cannot be faulted**. The appeal is, accordingly, dismissed. There shall be no order as to costs.

20.8 Considering the above judgments and ratio of judgment of the Hon'ble Apex Court, since the occupant herein is the third person so he cannot suffer therefore, the order of pay and recover akin to above referred judgment is required to be passed. So far as the point of liability is concerned, as discussed in the issue No.1, the driver of Motorcycle No.GJ-17-CD-6303 held solely negligent for the occurrence of accident. It is established from the record that the opponent no.1 herein was owner and opponent No.2 was the Insurer at the time of accident. It it established from the Insurance Policy that the offending vehicle was insured with the opponent No.2 and the policy was in existence when the motor accident took place and risk of occupant being third party was also covered under the policy. Therefore, the present opponents Nos.1 & 2 are jointly & severally liable to pay awarded amount to the claimants. Further the insurer has to first pay and can recover the said amount from the insured of the vehicle i.e. the opponent No.1, in accordance with law.

Interest:

21. Now what will be the appropriate rate of interest on the awarded amount of compensation is required to be decided. In pursuance to case decided by ***Hon'ble Apex Court*** in case of ***Smt. Anjali & Ors. v/s Lokendra Rathod & Ors.,*** reported in ***2022 LiveLaw (SC) 1012***, it would be just and proper to award the simple interest at the rate of 9% p.a., accordingly the applicants will be entitled to get simple interest at the said rate. The same rate of interest on the awarded amount of compensation was even granted

22. In view of the above discussion, the petitioners are entitled to receive the compensation along with simple interest @ 9% per annum from date of claim petition till realization of the same, from all the opponent nos.1 & 2 jointly and severally. Accordingly for the issue no.2 issue no.3 following final order is passed in larger interest of justice.

~: O R D E R :~

1. This petition is hereby partly allowed against the opponent Nos.1 & 2.
2. The applicants are entitled to recover **Rs.12,15,038/- (Rupees Twelve Lakhs fifteen thousand thirty eight only)** along with simple interest @ 9% per annum and proportionate cost from the date of claim petition till realization of the same, from all the opponent Nos.1 & 2, jointly and severally.
3. The opponent No.2 shall at first instance deposit the amount of compensation and shall be entitled to recover same from the opponent No.1, on strength of this order.
4. Accordingly, the opponents shall jointly and

severally deposit the amount of compensation as above together with interest @ 9% per annum from the date of filling of the claim petition till realization of the same, before the registry of this Tribunal within one month from the date of this Judgment.

5. The opponents are hereby directed to deposit before the registry of this Tribunal the above amount of award, to the extent of the liability fixed herein above, after deducting the amount of interim compensation, if any, paid u/sec.140 of M.V. Act, within one month from the date of this order.

6. On deposit of the above amount of award by the opponents before this Tribunal, the amount of Court Fees, recoverable if any, be recovered from the awarded amount and the same be considered under the head of the costs of the petition.

7. The order of disbursement and payment of the deposited amount will be done then after.

8. The petitioner is directed to submit following details within one week from today:

- Name of the petitioners/victim with address:

- Name of the Nationalized Bank & Branch, Bank IFSC Code, Account Number of the Petitioners/Victim.

- First page of the Bank pass-book, which contains the photograph of the petitioners/victim, duly attested by the Bank concerned, should be made available.

- Wherever the petitioners/victim is impleaded as respondents, before the claims tribunal, their account details, as above, will have to be furnished.

9. The Insurance Company / Transport Corporations and such other entities shall deposit the amount as directed *vide* letter No. A/c.319/2023, dated 27.07.2023, in the Bank of Baroda, Main Branch, Godhra, A/c. Name : **MACT GODHRA,** A/c. No. **01820100027160**, IFSC Code : **BARB0GODHRA** and on such deposits being made, the Insurance Companies / Transport Corporations and such other entities shall submit a letter to the Registry of District Court, Panchmahals at Godhra, enclosing a copy of the said bank advice, in prescribed format, as per which the deposit was made to the bank account of the Claims Tribunal, to enable the Claims Tribunal to keep tab on the deposits made and the MACPs for which they were made, which is a fundamental need for smooth implementation.

The Payment Advice for remittance of compensation is as under:

PAYMENT ADVICE FOR REMITTANCE OF COMPENSATION

From : (Name of the Bank)

To : (Name of the Court)

We confirm remittance of compensation as follows on instructions of Insurance Company / Transport Corporation :

1.	M.A.C.P. Number
2.	On the file of (Name of Claims Tribunal)
3.	Place
4.	Date of Award
5.	Amount Deposited

6.	Income Tax Deduction at Source, if any Unique Transaction Reference (UTR) No.

10. The Insurance Companies / Transport Corporations and such other entities making such deposit, shall also send a copy of the payment advice in the aforesaid clause to the Claims Tribunal concerned and serve a copy of the same on the claimants or their counsel as the case may be.

11. In view of the judgment delivered by the Division Bench of Hon'ble Gujarat High Court in the case of ***Oriental Insurance Co. Ltd. v/s Chief Commissioner of Income Tax (TDS), Special Civil Application No. 4800 of 2021,*** the interest awarded by the Motor Accident Claims Tribunal U/Sec.171 of the Motor Vehicle Act, 1988, is not taxable under the Income Tax Act, 1961.

12. The award be drawn accordingly.

Signed & Pronounced in the open Court today,
i.e. on this 7th day of August, 2026.

Date: 07.08.2026
Place: Godhra.

(Chandrapalsingh K. Chauhan)
Motor Accident Claims Tribunal (Main)
Panchmahals at Godhra
UID Code No. GJ-00513

Malek