IN THE COURT OF HON'BLE MOTOR ACCIDENT CLAIMS TRIBUNAL (MAIN), PATAN DISTRICT, AT – PATAN

M.A.C. PETITION NO.263 OF 2023 (Main)

WITH

M.A.C. PETITION NO.05 OF 2024

M.A.C.PETITION NO.263 OF 2023 Exh.:76

Received on	:-	11-08-2023
Registered on	:-	11-08-2023
Decided on	:-	30-07-2026
Duration	:-	**Y M D** 2 11 19

CLAIMANTS/APPLICANTS:

Legal heirs of Late Thakor Udaji Gandaji

1. **Thakor Gandaji Ambaramji**
   (Father of deceased)
   Aged about 57 years, Occupation: Agriculture,

2. **Thakor Jagiben Gandaji**
   (Mother of deceased)
   Aged about 55 years, Occupation : Household,

3. **Thakor Kanjiji Gandaji**
   (Brother of deceased)
   Aged about 29 years, Occupation:Agriculture,
   All R/o. Nava Manka, Ta. Harij, Dist. Patan.

V/s.

OPPONENTS IN MACP NO.263/2023 :-

1. **Owner of EECO Car No.GJ-09/BD-1393:**
   Indrajit Hargovanbhai Vaghela

R/o. Meu, Ta. Dist. Mahesana.

2. **Insurance Com. of EECO Car No.GJ-09/BD-1393:**
H.D.F.C. Ergo General Insurance Co. Ltd.
Address:Mahesana, 2nd floor, Apollo Enclave,
Nr.Modhera Cross road, Ta. Dist. Mahesana.

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M.A.C.PETITION NO.05 OF 2024 Exh.:20

Received on	:-	08-01-2024
Registered on	:-	08-01-2024
Decided on	:-	30-07-2026
Duration	:-	**Y M D** 2 6 22

CLAIMANTS/APPLICANTS:

Legal heirs of Late Vaghri Ranjitbhai Baldevbhai

1. **Vaghri Nitaben Ranjitbhai**
(Wife of deceased)
Aged about 30 years,
Occupation : Household work,

2. **Minor Vaghri Mahi Ranjitbhai**
(Daughter of deceased)
Aged about 11 years,
Occupation : Study,

3. **Minor Vaghri Snehal Ranjitbhai**
(Daughter of deceased)
Aged about 7 years,
Occupation : Study,

4. **Minor Vaghri Ashik Ranjitbhai**
(Son of deceased)
Aged about 5 years,
Occupation : Study,
{Applicant Nos.2 to 4, being minor, through guardian and next friend applicant No.1-mother}
All R/o.Harij, Somnathnagar-2, Ta.Harij, Dist. Patan.

V/s.

<u>OPPONENTS IN MACP NO.263/2023</u> :-

1. **Owner of EECO Car No.GJ-09/BD-1393:**
Indrajit Hargovanbhai Vaghela
R/o. Meu, Ta. Dist. Mahesana.

2. **Insurance Com. of EECO Car No.GJ-09/BD-1393:**
H.D.F.C. Ergo General Insurance Co. Ltd.
Address:Mahesana, 2nd floor, Apollo Enclave,
Nr.Modhera Cross road, Ta. Dist. Mahesana.

3. **Owner of Motorcycle No.GJ-24/AK-9261:**
Legal heirs of Thakor Udaji Gandaji
Thakor Gandaji Ambaramji
R/o. Nava Manka, Ta. Harij, Dist. Patan.

<u>APPEARANCE IN BOTH PETITIONS</u> :-
****
Mr. V. D. Zala/Mr.A.B.Raval, learned advocate for applicants.
Mr. H. J. Chakravati,learned advocate for Opponent No.1.
Mr. P. S. Shah, learned advocate for Opponent No.2.
Opponent No.3 in MACP No.05/2024 - Ex-parte.
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-: <u>C O M M O N</u> <u>J U D G M E N T</u> :-

1. Present both claim petitions arises from one and same road accident, therefore I propose to decide them by this common judgment. In MACP No.263/2023, applicants-legal heirs of both petitions have filed application vide Exh.27 to consolidate both the matters. As per order below Exh.27, MACP Nos.263/23 & 05/24 were consolidated, treating MACP NO.263/23 as main MACP, whereupon entire evidence is recorded.

2. Both the MACPs are filed u/s.166 of M.V.Act.

3. **Facts of the Claim Case No.263/2023 is stated to be as under:-**

3.1 It is the case of applicants that, on 20/06/2023, at about 5.30 of evening, Udaji Gandaji (in short "deceased) was returning on his Motorcycle bearing RTO registration No.GJ-24/AK-9261 (herein-after referred to as "motorcycle") with his friend Ranjitbhai Vaghari after visiting the temple of Ramdevpir with moderate speed and coming towards Harij, at that time EECO Car bearing RTO registration No.GJ-9/BD-1393 (for the sake of convenience "EECO car") come from opposite side in rash and negligent manner and hit the motorcycle coming from wrong side, as a result, both fell down on the road and sustained grievous injuries. Amongst them, deceased Udaji sustained grievous injuries at his chest, head, thigh, hands and legs as per mentioned in P.M. Report, whereas pillion rider Ranjitbhai also sustained serious injuries. So, immediately they were taking Dharpur hospital by 108 emergency service but died on the way whose postmortem carried out at Patan Civil Hospital.

3.2 The F.I.R of which came to be registered with Harij police station against the driver of the EECO car as CR.No. 112170092303999/2023 on 21/06/2023.

3.3 It is further stated that deceased Udaji aged about 28 years at the time of accident and was earning Rs.13,000/- per month by doing agriculture work. Deceased was bachelor and living in joint family and helped to maintain his family. If the accident had not been occurred, the income of deceased would have been increased in total. They have also loss of love & future dependency. Therefore, in all, applicants have claiming **Rs.20,00,000/-** towards total amount of compensation.

4. **Facts of the Claim Case No.05/2024 is stated to be as under:-**

4.1 On 20/06/23, at about 5.30 of evening, deceased Vaghri Ranjitbhai Baldevbhai and his friend Thakor Udaji were returning from the temple of Ramdevpir, near to bus-stand of Jashomav village, at that time the motorcycle was driving by Thakor Udaji and deceased Ranjitbhai was sit as a pillion rider and when they reached near village Dantarvada, on Harij-Chanasma road, one EECO car come from Harij side i.e. opposite side and hit the motorcycle wrongly, as a result, both were fell down on the road and sustained serious injuries body as a whole who were died on the way when they were shifted to Dharpur hospital via 108 service. Thus, the accident in question occurred due to rash and negligent driving of EECO car.

4.2 It is the case of applicants that, at the time of accident deceased Ranjitbhai aged about 31 years old and he was hale and hearty and well builded person and was earning Rs.15,000/- per month out of doing masonry work and maintained his family. If the accident had not been occurred, the income of deceased would have been increased in total. They have also loss of love & future dependency. Therefore, in all, applicants have claiming **Rs.30,00,000/-** towards total amount of compensation.

5. Notices issued by the Tribunal upon the opponents of both MACPs and said has been duly served and after service of the notices, opponent Nos.1 & 2-owner and insurance company of both MACPs remained present through their learned advocate and filed their written statements vide Exhs.10, 26, 12 & 19 for both petitions. The learned advocate for opponent No.1 has denied all the averments mention in plaint and stated that opponent No.1-owner has taken insurance policy of his EECO car and he has paid premium amount for vehicle which is covered the date of accident and, therefore, insurance company is liable to pay the amount of compensation on behalf of owner of the vehicle.

5.1 Whereas learned advocate for opponent No.2-insurance company has also denied the facts of accident and other pleadings as well as involvement of vehicle in toto. It is further submitted that the claim of applicant/s is/are highly excessive and exaggerated looking to the facts of petitions. It is further submitted that driver of EECO car was not holding valid and effective driving licence to drive the EECO car and at the time of accident, driver and pillion rider of motorcycle were not wearing any safety equipment like helmet, gloves and as such, the entire incident occurred due to sole negligence on the part of the third party driver of motorcycle. Hence, this petition to be dismissed against opponent No.2.

6. Learned advocate Mr.P.S.Shah, appearing for Opponent No.2 has given application u/s.170 of the M.V.Act for obtaining the necessary permission for cross-examining the witnesses on all points which was permitted by the tribunal on 22/01/2026 vide Exh.37.

7. The learned advocate for applicants has produced following oral as

well as documentary evidence on record.

ORAL EVIDENCE:-

In support of claim petitions, the applicant of MACP No.263/2023 Thakor Gandaji Ambaramji & applicant of MACP No.05/2024 Vaghari Nitaben Ranjitbhai have produced their affidavits in both petitions vide Exhs.35 & 36.

DOCUMENTARY EVIDENCE :

Sr. No.	Particulars	Exh.
	MACP Nos.263/23 & 05/24	
1.	Certified copy of F.I.R	42
2.	Certified copy of Panchnama of place of accident	43
3.	Certified copy of Inquest Panchnama of Thakor Udaji	44
4.	Certified copy of P.M.Note of Thakor Udaji	45
5.	Copy of R.C.Book of EECO Car	46
6.	Copy of Insurance Policy of EECO car	47
7.	Copy of Aadhar Card of applicant No.1	48
8.	Copy of PAN Card of applicant No.1	49
9.	Copy of Bank Passbook of applicant No.1	50
10.	Copy of Aadhar Card of applicant No.2	51
11.	Copy of PAN Card of applicant No.2	52
12.	Copy of Bank Passbook of applicant No.2	53
13.	Copy of Aadhar Card of applicant No.3	54
14.	Copy of PAN Card of applicant No.3	55
15.	Copy of Bank Passbook of applicant No.3	56
16.	Copy of Aadhar Card of deceased Vaghari Ranjitbhai	57
17.	Medical bills of late Ranjitbhai	40

18.	Prescriptions of hospital	41
19.	Closing pursis of applicants	60

DOCUMENTARY EVIDENCE OF OPPONENT No.2 :

Sr. No.	Particulars	Exh.
	MACP Nos.263/23 & 05/24	
1.	Certified copy of R.C.Book of EECO car	70
2.	Copy of Charge-sheet of EECO car	71

8. The learned advocate Mr.P.S.Shah for opponent No.2 has examined Mr.Lalsing Babuji Darbar, P.S.I., Investigating Officer, Harij vide Exh.62. He has also produced affidavit of Vivek Rajnikant Shah, Asstt. Manager of insurance company vide Exh.69. He has given closing purshis vide Exh.72 and declare his evidence closed.

9. Upon pleadings of the party, common issues are came to be framed at **Exh.15 & 15** in both petitions, which are as under :-

-: ISSUES :-

1. Whether the applicants prove that deceased died in the accident which occurred due to rash, careless and negligent driving of the drivers of the motor vehicles involved in the accident ?

2. What amount of compensation the applicants are entitled to get and from whom and at what rate of interest ?

3. What order and award?

10. For the following reasons, my answer to the above issues are as under:

1. In the affirmative.
2. As per final order.
3. As per final order.

11. I have heard learned advocates for the respective parties. The learned advocate Mr. V. D. Zala for the applicants in both petitions has produced written arguments vide Exh.75 and in support of his submissions, he has placed reliance upon the following authorities:-

1. **Dwarka and others V/s. Bhairam and others,** reported in **2026 ACJ 556** &

2. **Isha Abbasbhai and others V/s. SBI General Ins. Co. Ltd. and another,** reported in **2026 ACJ 575**.

-:: R E A S O N S ::-

ISSUE No.1 IN BOTH PETITIONS:

ISSUE OF NEGLIGENCE:-

12. After perusing the pleadings as well as evidence led by the parties, it appears that vehicular accident took place between two vehicles, whereupon deceased Udaji Gandaji Thakor was driving one of the involved vehicle i.e. motorcycle. Thus, issue of contributory negligence of the deceased himself would be construed for the petition No.263/23.

NEGLIGENCE:-

12.1 The applicant No.1 Thakor Gandaji Ambaramji & Nitaben Ranjitbhai Vaghari of both petitions have given their depositions vide Exhs.35 & 36 and they have supported the claim petitions through their oral evidence. Further, they have been cross examined by the learned advocate for opponent No.2 in which they have reiterated the same facts as mentioned in plaint & have admitted that they have no personal knowledge regarding accident. The father of Udaji Thakor has admitted that his son was driving the motorcycle at the time of accident and he had not valid driving licence to drive motorcycle. The widow of Ranjitbhai Vaghari has admitted that her husband was going on motorcycle as pillion rider. She has further admitted that postmortem was not carried out her husband.

12.2 Further, the applicants have produced the certified copy of F.I.R, Panchnama of place of accident, Inquest Panchnama and P.M.Note of deceased Udaji Gandaji Thakor vide Exhs.42 to 45 respectively. The complaint in respect to the accident is given by the elder brother of deceased at the next day of accident against the driver of EECO car who fled away from the place of accident. Looking to the Panchnama of place of accident, the accident in question occurred on Mahesana-Radhanpur highway road about 30ft broad road, one motorcycle lying at the road side. Looking to the front portion of motorcycle, it's both steering bent inside. Right side of bumper bent inside and side light also not found. Dry blood stains found at the edge of white line of left side of the road. Fan of front wheel found semi-broken condition. Thus, the motorcycle damaged in sum of Rs.10,000/- as per Panchas. Some pieces of plastics found surrounding the motorcycle. One EECO car lying about 50ft. far from the motorcycle. Front portion EECO car-driver side and lower portion of wheel found total in bent condition. Back portion of right side door found bent and glass of back seat found total broken condition and pieces of glass shown on the seat of back here and there. Thus, as per Panchas, the EECO car damaged in sum of Rs.20,000/- approximately. Looking to the

Inquest Panchnama & P.M. report of Thakor Udaji Gandaji Exh.44 & 45, it appears that the cause of death is haemorrhagic shock due to multiple injuries of body. Whereas death of Ranjitbhai Vaghari-pillion rider of motorcycle also died in this accident and looking to the medical bills and prescription of deceased Exhs.40 & 41 and other documentary evidence on record, it is proved that he died due to sustained accidental injuries. Further more, after investigation, the charge-sheet Exh.71 has been filed against the driver of EECO car who fled away from the place of incident.

13. After perusing oral as well as documentary evidence on record, it transpires that deceased Thakor Udaji Gandaji & Vaghari Ranjitbhai died due to vehicular accident occurred on 20/06/2023 between EECO car and motorcycle. The charge-sheet has been filed against the driver of EECO car after completing investigation, so adverse inference drawn against him as well as he did not have driving licence to drive the EECO car. Moreover, driver of EECO car being eye witness of accident has not stepped into witness box for his defence. Furthermore, driver of motorcycle also did not have driving licence to drive motorcycle. In such circumstances, considering the facts of Panchnama of place of incident & charge-sheet, the reasonable inference would arise that both the drivers did not have driving licence to drive their offending vehicles, in such circumstances, this Tribunal come to the conclusion that, both the drivers of involved vehicles negligent to drive their vehicles in the ratio of **90:10** i.e. driver of EECO car negligent to the extent of **90%** and driver of motorcycle-Udaji Gandaji Thakor negligent to the extent of **10%**. If they were taking care to drive their vehicles in careful manner by following traffic rules and regulations, the accident in question had not been occurred, and hence, I hold issue No.1 accordingly in affirmative.

ISSUE NO.2 IN M.A.C.P.NO.263/2023:
ENTITLEMENT OF COMPENSATION :-

14. Once it is established that, accident in question has occurred due to rash and negligent driving of drivers of EECO car and motorcycle and it is also proved that, Udaji Gandaji Thakor succumbed to injuries in the said accident, whereas Vaghari Ranjitbhai died during the treatment.

CLAIM FOR DEPENDENCY LOSS :-

15. The claim for dependency loss of income can be computed by considering the age of deceased. And hence, it is sine qua non to determine first the age, and loss of future prospect due to death of the deceased. The said aspects are discussed below.

AGE OF DECEASED & MULTIPLIER :-

16. The applicants have not produced any cogent evidence regarding age of deceased and, therefore, looking to the P.M.Report of deceased Udaji, his age mention as 28 years and thus tribunal consider the same. Hence, as ratio laid down in case of **Sarla Verma** multiplier of 17 for the age group 26-30 is applicable hence, present applicants are entitled for multiplier of **17** for the consideration of dependency loss of income.

INCOME OF DECEASED:

17. As far as income of deceased is concerned, applicants have claimed that, at the time of accident deceased Udaji was earning Rs.13,000/- per month out of doing agricultural work. In support of submission, the applicants have not produced any reliable evidence regarding income of deceased, in such circumstances, in absence of books of account and other cogent evidence related income, this Tribunal consider **Rs.11,700/-** for semi-skilled person as per minimum wages.

18. In the case of **NATIONAL INSURANCE CO. LTD. V/S. PRANAY SHETHI,** reported in **2017 ACJ 2700,** Hon'ble Supreme Court held that, “in case the deceased was self-employed or on a fixed salary, an addition towards future prospectus **40%** of the established income should be the warrant where the deceased was below 40 years.

19. Keeping in mind the principle set in the case of **NATIONAL INSURANCE CO. LTD. V/S. PRANAY SHETHI, (supra)** which is consistently followed in all later cases, I add **40%** to the income of the deceased in her existing income as to calculate future dependency loss in absence of cogent evidence regarding permanent job. After adding 40%, the figure arrived would be **Rs.16,380/- [Rs.11,700+ Rs.4,680(40%)]** per month.

<u>FUTURE DEPENDENCY LOSS</u>:-

20. In present case, deceased was bachelor, so 1/2 of his income is deducted towards personal and pocket expense. Mathematical calculation shows result as **Rs.8,190/- [Rs.16,380-Rs.8,190(1/2],** the multiplicand could be applied for assessing future dependency loss. Now, if we implies this figure into the mathematical formula, derived future dependency loss would be **Rs.8,190/- monthly dependency loss X 12 months X 17 multiplier = Rs.16,70,760/-** the amount of compensation which can be granted as future dependency loss.

<u>Conventional Compensation</u> :-

21. It is an admitted fact that, deceased Udaji was un-married and, therefore, this Tribunal grant **Rs.36,000/-** with increment towards Funeral expenses & loss of Estate as per quoted in the case of **NATIONAL**

INSURANCE CO. LTD. V/S. PRANAY SHETHI and OTHERS, 2017 ACJ 2700. Applicant Nos.1 & 2 being parents are entitled **Rs.40,000/-** and applicant No.3 being elder brother of deceased is also entitled **Rs.40,000/-** as loss of consortium under the head of Filial consortium. Thus, applicants are entitled for compensation of **Rs.17,86,760/-** from the opponents.

Deduction of contributory negligency of deceased himself :-

22. Out of the total compensation of **Rs.17,86,760/-, 10%** contributory negligence attributable on the part of deceased Udaji himself requires to be deducted and, therefore, the total amount would come to **Rs.16,08,084/- [Rs.17,86,760/- – Rs.1,78,676/- (10% contributory negligency)]** and it is just and reasonable amount and I award the same.

23. Calculation of compensation is as per below table:

Sl. No.	Heads	Calculation
1	Compensation for Dependency loss	Rs.16,70,760/-
2	Compensation for loss of funeral expenses & loss to estate	Rs.00,36,000/-
3	Filial Consortium to applicants No.1 & 2	Rs.00,40,000/-
4	Filial Consortium to applicant No.3	Rs.00,40,000/-
	Total amount of compensation 10% Contributory negligency deceased himself	Rs.17,86,760/- Rs.01,78,676/- Rs.16,08,084/-

24. In total, applicants are entitled for compensation of **Rs.16,08,084/- (Sixteen Lakhs Eight Thousand Eighty Four rupees only)** from the opponents.

ISSUE NO.2 IN M.A.C.P.NO.05/2024:

ENTITLEMENT OF COMPENSATION :-

CLAIM FOR DEPENDENCY LOSS :-

25. The claim for dependency loss of income can be computed by considering the age of deceased. And hence it is sine qua non to determine first the age, and loss of future prospect due to death of the deceased. The said aspects are discussed below.

AGE OF DECEASED & MULTIPLIER :-

26. The applicants/legal heirs of deceased Ranjitbhai have produced the copy of Aadhar Card of deceased Ranjitbhai in which his birth date mention as 29/11/1992 and the accident in question occurred on 20/06/2022, thus at the time of accident deceased was 30 years 05 months 22 days. Hence, as ratio laid down in case of **Sarla Verma** multiplier of 17 for the age group 26-30 is applicable hence, present applicants are entitled for multiplier of **17** for the consideration of dependency loss of income.

INCOME OF DECEASED:

27. As far as income of deceased is concerned, applicants have claimed that, at the time of accident deceased Ranjitbhai was earning Rs.15,000/- per month out of doing masonry work. In support of submission, the applicants have not produced any co-gent evidence regarding income of deceased. Thus, in absence of books of account and other cogent evidence of income, this Tribunal consider **Rs.11,700/-** for semi-skilled person as per minimum wages in year .

28. In the case of **NATIONAL INSURANCE CO. LTD. V/S. PRANAY SHETHI,** reported in **2017 ACJ 2700,** Hon'ble Supreme Court held that, “in case the deceased was self-employed or on a fixed salary, an addition towards future prospectus **40%** of the established income should be the warrant where the deceased was below 40 years.

29. Keeping in mind the principle set in the case of **NATIONAL INSURANCE CO. LTD. V/S. PRANAY SHETHI, (supra)** which is consistently followed in all later cases, I add **40%** to the income of the deceased in her existing income as to calculate future dependency loss in absence of cogent evidence regarding permanent job. After adding 40%, the figure arrived would be **Rs.16,380/- [Rs.11,700+ Rs.4,680(40%)]** per month.

<u>FUTURE DEPENDENCY LOSS</u>:-

30. In present case, deceased was married and survived four dependents, so 1/4 of his income is deducted towards personal and pocket expense. Mathematical calculation shows result as **Rs.12,285/- [Rs.16,380-Rs.4,095(1/4],** the multiplicand could be applied for assessing future dependency loss. Now, if we implies this figure into the mathematical formula, derived future dependency loss would be **Rs.12,285/- monthly dependency loss X 12 months X 17 multiplier = Rs.25,06,140/-** the amount of compensation which can be granted as future dependency loss.

<u>Conventional Compensation</u> :-

31. It is an admitted fact that, deceased Ranjitbhai was married and, therefore, this Tribunal grant **Rs.84,000/-** with increment towards Funeral expenses & loss of Estate as per quoted in the case of **NATIONAL INSURANCE CO. LTD. V/S. PRANAY SHETHI and OTHERS, 2017 ACJ 2700.** Applicant Nos.2 to 4 being minor children of deceased are entitled **Rs.40,000/-** as loss of consortium under the head of parental consortium.

32. After the accident, deceased was admitted at Patan Janta Hospital on 20/06/2023 for treatment where he died during the treatment on 21/06/2023, for which, applicants have produced medicines bills worth of Rs.5,161/- which is consider as round figure **Rs.5,160/-** as medical expense.

33. Calculation of compensation is as per below table:

Sl. No.	Heads	Calculation
1	Compensation for Dependency loss	Rs.25,06,140/-
2	Compensation for loss of Consortium, funeral expenses & loss to estate	Rs.00,84,000/-
3	Filial Consortium to applicants No.2 to 4	Rs.00,40,000/-
4	Medical expenses	Rs.00,05,160/-
	Total compensation	Rs.26,35,300/-

34. In total, applicants would get compensation of **Rs.26,35,300/- (Twenty Six Lacs Thirty Five Thousand Three Hundred rupees only)** and it is just and reasonable amount and I award to same.

LIABILITY IN M.A.C.P.NO.263/2023:-

35. Learned advocate Mr.P.S.Shah, appearing on behalf of Insurance Company - opponent No.2 has submitted written arguments vide Exh.73, wherein it is specifically mentioned that the driver of EECO car Thakor Bhikhaji Prahladji did not have valid & effective driving licence to drive the EECO car. Moreover, Investigating Officer has added sec.3, 181 of M.V.Act in charge-sheet which fact supported that Thakor Bhikhaji Prahladji did not have valid driving licence at the time of accident. He has also mentioned regarding the driving licence of EECO driver in his affidavit Exh.62. The learned advocate for opponent No.2 has examined

Legal Officer of insurance company vide Exh.69 in which he has specifically stated that when driver of involved vehicle did not have valid driving licence to drive the vehicle, it will be breached the terms and conditions policy occurred between insurance company and owner of vehicle. Further, it is argued that, if there is a breach of conditions, the insurance company first pay the amount of compensation to the applicants of both petitions and then recover the amount from the owner of the offending vehicle as per relied upon the citations mentioned in his written arguments.

36. In present petition, applicants have joined owner and insurance company of EECO car as opponent Nos.1 & 2. Applicants being legal heirs of deceased and being third party, they have liable to get compensation from opponents jointly and severally as per citations relied upon regarding pay and recovery.

37. From facts of present petitions, it appears that claimants are undisputedly third party and driver of EECO car did not have valid and effective driving licence at the time of accident and the owner having insured from insurance company of vehicle on terms and conditions after paying premium to insurance company and insurance company is issuing insurance policy after receiving premium from owner accepting liability as per Sec.147 of the M.V.Act. Therefore, in case, if, driver or owner if committed any breach of terms and conditions of insurance company, then insurance company can't be exonerated from statutory liability which has been cast upon insurance company under the provisions of Sec.147 of the M.V.Act, but the remedy is available to insurance company, as per their terms and conditions incorporated in insurance policy that in case, if breach is committed by driver and owner of the vehicle, then, they are

entitled to recover the amount, for which, indemnify by insurance company for risks of owner to third party. Even in case of *Shamanna V/s. Divisional Manager, Oriental Insurance Co. Ltd. reported in (2018) 9 SCC 650* (supra), Hon'ble Supreme Court set aside the order of Hon'ble High Court to recover the compensation from the owner of the vehicle and partly allowed the appeal and held that where driver did not possess a valid driving licence and there is breach of policy condition, pay and recover can be ordered in case of third party risks; insurance company directed to recover the amount from the owner of vehicle by initiating proceedings before the executing court without filing suit.

38. In present both petitions, the drivers of EECO car & motorcycle did not have valid and effective driving licence to drive their offending vehicles and, therefore, this tribunal rely upon the latest case of **First Appeal from Order No.1780/24, 1776/24, 1777/24 & 1789/24,** reported in **2025(AIGEL)**, **HIGH COURT OF JUDICATURE AT ALLAHABAD**, decided on 31/01/2025, whereupon Hon'ble Apex Court held that, mere omission of proviso attached to sub-section (4) of Section 149 of Motor Vehicles Act, 1988 after its replacement by Section 150 of Motor Vehicles (Amendment) Act, 2019 (32 of 2019), neither takes away the liability of the insurer to pay the claimants nor its right to recover the said amount from the owner. The law to this effect remains intact and unaffected by Amendment Act, 2019 and, hence, insurer shall continue to indemnify the owner risk in relation to accidents taking place after 01.04.2022 and PAY & RECOVER principle will still continue to govern the field advancing social object of the Statute protecting third party interest. Principle of law laid down by the Supreme Court in **National Insurance Company Limited vs. Swaran Singh and others, JT 2004 (1) SC 109** has not lost its

significance and binding effect despite omission of proviso. In case of **Bajaj Allianz General Insurance Co. Ltd. V/s. Dipakkumar Narayanbhai Nai & Ors.** reported in **GLR 3694** Vol.XLIX, **Pappu and others V/s. Vinod Kumar Lamba and another**, reported in **2018 ACJ 690 & Lal Singh Marabi V/s. National Insurance Co. Ltd.,** reported in **2017 ACJ 1362,** whereupon Hon'ble Apex Court held that, insurance company directed to pay the compensation to claimant/s and recover the amount from owner in absence of driving licence of driver of vehicle.

39. In present case, driver of the offending vehicle EECO car did not have valid and effective driving licence at the time of accident which is proved and, therefore, this Tribunal can pass to pay the compensation awarded to the claimants and to recover it from the owner of the offending vehicle.

40. As discussed herein-above in issue No.1, drivers of both the offending vehicles find negligent in the ratio of 90:10 and they did not have driving licence to drive their vehicles. In such circumstances, being driver of offending vehicle EECO car is legally liable to pay the amount of compensation with running interest from the date of application till realization with costs. Whereas opponent No.1 being owner of offending vehicle EECO car is also legally liable to pay compensation. The insurance policy Exh.47 is coming in to force from 24/11/2022 to 23/11/2023 and the accident in question occurred on 20/06/2023 i.e there is no any dispute with the policy on record and, therefore, owner of the offending vehicle is required to be liable to pay the amount of compensation and claim against Opponent No.2 is required to be directed to pay compensation awarded amount to the claimants and to recover it from the owner of the offending vehicle-opponent No.1 in the same

proceedings by applying the principle of "pay and recover".

<u>LIABILITY IN M.A.C.P.NO.05/2024</u>:-

41. In present petition, applicants have joined owner and insurance company of EECO car as opponent Nos.1 & 2 and owner of motorcycle as opponent No.3. As discussed herein-above in issue No.1, drivers of both the offending vehicles find negligent in the ratio of 90:10 and they did not have driving licence to drive their vehicles. In such circumstances, being drivers of offending vehicle EECO car & motorcycle are legally liable to pay the amount of compensation with running interest from the date of application till realisation with costs. Whereas opponent Nos.1 & 3 being owners of offending vehicle EECO car & motorcycle are also legally liable to pay compensation. The insurance policy Exh.47 is coming in to force from 24/11/2022 to 23/11/2023 and the accident in question occurred on 20/06/2023 i.e there is no any dispute with the policy on record and, therefore, owners of the offending vehicles are required to be liable to pay the amount of compensation and claim against Opponent No.2 is required to be directed to pay compensation awarded amount to the claimants and to recover it from the owners of the offending vehicles-opponent No.1 & 3 in the same proceedings by applying the principle of "pay and recover". Thus, opponents No.1 to 3 are liable to pay the said amount of compensation with interest and costs to the applicants jointly and severally. However, as noted earlier this extent of *inter se* liability would be composited liability and applicants being legal heirs of deceased who being third party would be entitled to claim compensation from both joint tort-feasors or from any one of them jointly and severally.

42. Considering the age of application and prevalent bank interest rate, I grant interest at the rate of 9% per annum on awarded amount from the date of petition till realization.

43. As a result of above discussions, issue No.1 proved in affirmative in favour of the applicants in both petitions and for issues No.2 & 3, I pass following order.

-: O R D E R :-

1. **M.A.C.P.No.263/2023 & 05/2024** are hereby partly allowed.

2. The claimants of **M.A.C.P.No.263/2023** are entitled to recover an amount of **Rs.16,08,084/- (Sixteen Lakhs Eight Thousand Eighty Four rupees only)** with interest & costs @ **9%** per annum from the date of claim petition till realization from the opponents, who are jointly and severally liable.

3. The claimants of **M.A.C.P.No.05/2024** are entitled to recover an amount of **Rs.26,35,300/- (Twenty Six Lacs Thirty Five Thousand Three Hundred rupees only)** with interest & costs @ **9%** per annum from the date of claim petition till realization from the opponents, who are jointly and severally liable.

4. Opponent No.2 is directing to first pay the awarded amount to the claimants of both petitions and then to recover the paid awarded amount from the owners of the offending vehicles-opponent No.1 & 3 without filing any suit.

5. Opponents/Insurance Company is hereby directed to deposit the aforesaid amount in both petitions before this Tribunal within one month from the date of this order. Further, in view of the directions

of the **Hon'ble Supreme Court of India in Writ Petition (Civil) No.534/2020, titled Bajaj Allianz General Insurance Co. Ltd. v/s. Union of India and the directions of the Hon'ble High Court,** Opponents/Insurance Companies/AMTS/State Transport Corporation, as the case may be, are directed to deposit the aforesaid amounts by way of Direct Bank Transfer through NEFT or RTGS only to the below mentioned Current Bank Account of this Claims Tribunal as directed in Circular No.08/2022 dated 01/02/2022. The particulars of the Current Bank Account is as under :-

Name of Bank	:	**Bank of Baroda, Market Yard Branch, Patan**
Account Name	:	**Motor Accident Claims Tribunal (Main), Patan**
Current Account No.	:	**08410100036624,**
IFSC Code	:	**BARB0MARPAT (fifth character is zero)**
MICR Code		**384012082**

Further, after deposit of the awarded amount in both petitions, the Insurance Company/AMTS/State Transport are instructed to ensure that deposit of the awarded amount, by way of direct bank transfer to the above said Current Bank Account in compliance of the Award passed by the Tribunal is accomplished by furnishing the following information in the format prescribed herein below along with bank payment advice to the Registry/Nazir Branch of this Court, for maintaining the account MACP Deposits by this Court. A copy of the same be also served to the claimants or their counsel as the case may be.

1	**MACP Number**	
2	**On the File of (Claims Tribunal Name)**	
3	**Date of Award**	
4	**Compensation Amount**	
5	**Income Tax Deduction at Source**	
6	**Bank Transaction Reference No./ Unique Transaction Reference (UTR) No.**	

6. The amounts of interim compensation in both petitions, if any awarded and paid, be deducted and adjusted from the above said amounts.

7. Disbursement of the amount shall be made at the time of the deposition of the awarded amount by the opponents in the Tribunal.

8. The disbursal of compensation amount shall be made directly to the credit of the bank account of the claimant/s in both petitions, as the case may be by NEFT or RTGS. The claimant/s are directed to furnish his following information in the format prescribed herein below to the Registry/Nazir Branch of this Court, for direct credit of the compensation amount to their account.

Aadhaar Card No.	
PAN Card No.	
Bank Name & Branch	
Bank Address	
Name and address of Account holder (claimant)	
Bank Account No.	

IFSC Code	
First page of passbook with photograph of the claimant duly attested by Bank be attached	

9. The opponents are directed to follow the guidelines of the Hon'ble Gujarat High Court in the judgment reported in **2007 ACJ 1897**, in the case of **Smt. Hansagauri Prafulchandra Ladhani & Others v/s. The Oriental Insurance Co. Ltd. & Others**, while calculating and deciding T.D.S in both petitions.

10. In case of Tax deduction at source, Form 16-A of the Income Tax Act be provided to the claimant/s on whose behalf the deduction has been made so as to enable him/her seek refund of tax deducted, if any.

11. Registry/opponents shall ensure compliance of Hon’ble Supreme Court’s directions in **Writ Petition (Civil) No.534/2020, titled Bajaj Allianz General Insurance Co. Ltd. v/s Union of India**.

12. Award be drawn accordingly in both petitions.

13. A copy of this judgment be placed on record of **M.A.C.P. No.05 of 2024**.

Signed & Pronounced in the open Court today on this **30th July, 2026**.

Date : 30/07/2026
Place : Patan.

(Prashantkumar H. Sheth)
Judge, MACT (Main), Patan
UNIQUE ID CODE NO.GJ00524

kpandey