


GJSK010010572022 	Presented on	:	14 <sup>th</sup> June 2022		
	Registered on	:	14 <sup>th</sup> June 2022		
	Decided on	:	12 <sup>th</sup> March 2026		
	Duration	:	03	07	28
			Years	Months	Days

**MOTOR ACCIDENT CLAIMS TRIBUNAL (MAIN)  
SABARKANTHA AT HIMMATNAGAR**

**Exhibit \_\_\_\_\_**

**MAC PETITION No. 50/2022**

Applicant: Devabhai Dhulabhai Patel,  
Age: About 52 years, Occupation: Service and  
Agriculture, Resi. Of: Nikoda,  
Taluka: Himmatnagar, Dist: Sabarkantha.

**V E R S U S**

Opponents: (1) Driver-cum-Owner of  
Eeco Car No. GJ-21-CA-9487  
(RC Book Holder):  
Jayeshbhai Natubhai Vaghri (Devi Pujak),  
Resi. Of: Piplawalu Faliyu, At: Kathwada,  
Taluka: Talod, Dist. Sabarkantha.

(2) Owner of Eeco Car No. GJ-21-CA-9487  
(Insurance Policy Holder):  
Babubhai Bhangiyabhai Patel,  
Resi. Of: Pir Maholla, At: Vegam,  
Taluka: Gandevi, Dist. Navsari.

..2..

- (3) Insurance Company of  
Eeco Car No. GJ-21-CA-9487:  
HDFC Ergo General Insurance Co. Ltd.,  
Off: First Floor, Sun Complex, Near Citi  
Bank, Gotri Road, Alkapuri, Baroda – 310007.

**Appearance:**

Mr. V.M. Darji, Learned Advocate for Applicant  
Mr. G.H. Parmar, Learned Advocate for Opponent No. 1  
Opponent No. 2 appeared in person  
Mr. C.Y. Bhatt, Learned Advocate for Opponent No. 3

**CLAIM PETITION FOR COMPENSATION OF**  
**Rs. 10,00,000/- U/S 166 OF THE MOTOR VEHICLES ACT**

**J U D G M E N T**

**[1] Prelude:**

Unfortunate miseries befallen on the human beings without them being invited and raising their ugly heads from uncertainties wrapped in the womb of future. The omnipotent providence is the only shelter which protects the human being from such untoward incident and remedies provided by men made law heal the wounds of materialism and which extend succour to mortal human.

The present petition under Section 166 of Motor Vehicles Act, 1988 with amendments made time to time seeks to award compensation as regards the injuries sustained by the applicant in the vehicular accident to the tune of Rs. 10,00,000/- (Rupees ten lakh only) from the opponents. The narrative in respect of occurrence of the accident and facts leading to initiation of the present petition has been given in the ensuing paragraph.

**[2] Brief facts narrating the cause of action:**

The description of the happenings goes that on 28<sup>th</sup> February, 2022, the applicant was going home after completing his service by driving his motorcycle bearing registration No. GJ-9-DB-5760 on Himmatnagar to Ranasan road. The applicant was driving his said motorcycle at moderate speed and on the correct side of the road. When the applicant herein reached the Akodara crossroads, at about 4:30 p.m., the Eeco car bearing registration No. GJ-21-CA-9487 driven by the opponent No. 1 herein rashly and negligently came from the opposite side, that is, Ranasan side and therefore, he lost control over his car and dashed with the motorcycle of the applicant herein. This is how the vehicular accident took place. On account of the vehicular accident, the applicant sustained serious injuries including fractures and other multiple injuries resulting into disabilities which need to be compensated by way of award under various heads and in all to the tune of Rs. 10,00,000/-.

The opponent No. 1 herein, driver-cum-owner of the Eeco car bearing registration No. GJ-21-CA-9487 as per the RC Book appeared before the Tribunal through his learned advocate and filed his written statement vide Exhibit 13 and denied each and every allegation leveled in the claim petition, the opponent No. 2 herein, owner of the Eeco car bearing registration No. GJ-21-CA-9487 as per the Insurance Policy appeared before the Tribunal through his learned advocate and filed his written statement vide Exhibit 14 and denied the allegations leveled in the claim petition, whereas the opponent No. 3, Insurance Company of the said Eeco car, appeared before the Tribunal through its learned

advocate and has denied the allegations leveled in the application by filing written statement vide Exhibit 21.

**[3] Evidence:**

To substantiate their rival assertion and material preposition of the fact, the parties herein have led their evidence as follows;

**(i) Applicant's evidence:**

**(a) Oral evidence:**

<b>Sr. No.</b>	<b>Name and Nature of the witness</b>	<b>Exhibit</b>
1	Affidavit by the applicant Devabhai Dhulabhai Patel	29
2	Deposition of Mr. Hiteshkumar Ramjibhai Patel	45

**(b) Documentary evidence:**

<b>Sr. No.</b>	<b>Particular and Nature of documents</b>	<b>Exhibit</b>
1	Copy of complaint	31
2	Copy of panchnama of place of accident	32
3	Copy of injury certificate of the applicant	33
4	Copy of injury certificate of the applicant	34
5	Copy of Insurance Policy of Eeco car No. GJ-21-CA-9487	35
6	Copy of bank statement of the applicant herein	38
7	Copy of salary certificate of the applicant herein	46
8	Copy of salary statement of the applicant herein	47
9	Copy of attendance sheet of the applicant herein	48

10	Leave certificate of the applicant herein	49
11	Discharge card of Jupiter Hospital	50
12	Prescriptions of the applicant herein	51
13	Copy of RC Book of motorcycle No. GJ-9-BD-5760 of the applicant herein	52
14	Copy of driving licence of the applicant herein	53
15	Copy of school leaving certificate of the applicant herein	54
16	Copy of charge-sheet	55
17	Disability certificate of the applicant	56
18	Original certificate issued Mr. Principal, by Nootan High School, Berna as per Section 65-B of Indian Evidence Act, 1872	59
19	Closing pursis	

**(ii) Opponent No. 1's evidence:**

**(a) Oral Evidence:**

Sr. No.	Name and Nature of the witness	Exhibit
	- Nil -	

**(b) Documentary Evidence:**

Sr. No.	Particular and Nature of documents	Exhibit
	- Nil -	

**(iii) Opponent No. 2's evidence:**

**(a) Oral Evidence:**

Sr. No.	Name and Nature of the witness	Exhibit
	- Nil -	

**(b) Documentary Evidence:**

<b>Sr. No.</b>	<b>Particular and Nature of documents</b>	<b>Exhibit</b>
	- Nil -	

**(iv) Opponent No. 3's evidence:**

**(a) Oral Evidence:**

<b>Sr. No.</b>	<b>Name and Nature of the witness</b>	<b>Exhibit</b>
	- Nil -	

**(b) Documentary Evidence:**

<b>Sr. No.</b>	<b>Particular and Nature of documents</b>	<b>Exhibit</b>
1	Closing pursis	

**[4] Arguments:**

**(a) Applicant:**

Learned advocate for the applicant herein would put forward his written arguments vide Exhibit 76 mainly stating that on the fateful day, that is, on 28<sup>th</sup> February, 2022, the applicant herein was returning home after completing his service at village Berna by driving his motorcycle bearing registration No. GJ-9-DB-5760 on Himmatnagar to Ranasan road, that the applicant herein was driving his said motorcycle at moderate speed and on the correct side of the road, that upon reaching the Akodara crossroads, at that time, at about 4:30 p.m., the Eeco car bearing registration No. GJ-21-CA-9487 which was being driven by the opponent No. 1 herein in rash and negligent manner, came from the opposite and wrong side, that is, Ranasan side and therefore, he lost control over his car and dashed with the motorcycle of the

applicant herein and consequently, the vehicular accident took place, that on account of the accident in question, the applicant herein sustained serious injuries including fractures and other multiple injuries resulting into disabilities, that looking to the oral as well as documentary evidence of the applicant herein, it is proved that the opponent No. 1 was the sole negligent for the accident, that as the opponent Insurance Company has accepted the premium covering the risk of third party, the Insurance Company is liable as the injured applicant herein was third party to the Insurance Company, that the applicant herein, immediately after the accident, was shifted from the place of occurrence first to Civil Hospital, Himmatnagar where he was imparted primary treatment, thereafter, for further treatment, he was advised to be shifted to private hospital, that is, Jupiter Hospital, Himmatnagar where he was admitted as indoor patient where X-Ray was made, implants were fitted, operation was carried out and for about fifteen days, he was admitted there, even he remained hospitalized from 6<sup>th</sup> April, 2022 to 10<sup>th</sup> April, 2022 at Jupiter Hospital, plastic surgery was made, that as regards the quantum, at the time of the accident, the applicant herein was aged about 52 years old and was earning to the tune of Rs. 40,000/- per month by doing service in Nootan High School, Berna as peon and he was also earning to the tune of Rs. 5,000/- by carrying out agricultural activities and thus, he was earning to the tune of Rs. 45,000/- per month in all and was maintaining his family, that the injuries sustained by the applicant herein have resulted into permanent disability of body as a whole to the extent of 25%, that on account of the accident and injuries, the applicant herein

has incurred huge expenses for medicines and treatment, special diet, attendants' charges and transportation to the tune of Rs. 3,50,000/-, he incurred loss under the actual loss of income for the period he was bedridden and on leave, he has also claimed to the tune of Rs. 1,00,000/- under the head of pain, shock and suffering and lastly, the applicant herein has prayed that as at the time of the accident, the vehicle was driven, owned and insured by the respective opponents, the Honourable Tribunal may grant compensation to the applicant herein from the opponents jointly and severally, that if the opponent Insurance Company argues that at the time of the accident, Jayeshbhai Natubhai Vaghri (Devipujak) was the owner of Eeco car bearing registration No. GJ-21-CA-9487 on RTO records whereas the Insurance Policy was in the name of the previous owner Babubhai Bhangiyabhai Patel and the name was not transferred on the name of the subsequent purchaser which breach of the Policy conditions, both of the aforesaid persons have been impleaded as parties to the claim petition, moreover, the applicant is the third party for Eeco car which is as admitted by the witness examined by the Insurance Company and therefore, as per Section 157 of the Motor Vehicles Act, the Insurance Policy is deemed to be transferred automatically, that if the insurer herein raises the dispute that at the time of the accident, the driver of Eeco car bearing registration No. GJ-21-CA-9487 was not holding the driving licence, but as the applicant herein is third party for the said vehicle, the insurer herein becomes liable to indemnify and in support of his aforesaid arguments, the learned advocate for the applicant herein has relied upon the following decisions;

- (i) **Oriental Insurance Co. Ltd. V/s Ramdas Madanlal Saini and Others, 2020 ACJ 742, Honourable High Court of Gujarat.**
- (ii) **United India Insurance Co. Ltd. V/s Rehanaben Salimbhai Mukindo and Others, 2019 ACJ 2498, Honourable High Court of Gujarat.**
- (iii) **Gujarat State Road Transport Corporation V/s Shantaben Maneklal Shastri & 5, First Appeal No. 1860/1992, Honourable High Court of Gujarat.**
- (iv) **National Insurance Company Ltd. V/s Chamundeswari & Ors., Civil Appeal No. 6151/2021, Honourable Supreme Court.**
- (v) **G. Govindan V/s New India Assurance Company Limited, 1999 (0) AIJEL-SC 9025, Honourable Supreme Court.**
- (vi) **Pushpa @ Leela & Ors. V/s Shakuntala & Ors., Civil Appeal No. 6924 of 2005, Honourable Supreme Court.**
- (vii) **Surendra Kumar Bhilawe V/s The New India Assurance Company Limited, Civil Appeal No. 2632 of 2020, Honourable Supreme Court.**
- (viii) **United India Insurance Co. Ltd. V/s Santro Devi & Ors., Civil Appeal No. 7009 of 2008, Honourable Supreme Court.**
- (ix) **Mallamma (Dead) By Lrs V/s National Insurance Co. Ltd. & Ors., Civil Appeal No. 1391 of 2009, Honourable Supreme Court.**
- (x) **Firdaus V/s Oriental Insurance Co. Ltd. & Ors., Civil Appeal No. 9310 of 2017, Honourable Supreme Court.**
- (xi) **National Insurance Co. Ltd. V/s Geeta Bhat & Ors., Civil Appeal No. 2257 of 2008, Honourable Supreme Court.**
- (xii) **Parminder Singh V/s New India Assurance Co. Ltd. & Ors., Civil Appeal No. 5123 of 2019, Honourable Supreme Court.**
- (xiii) **Bhikhabhai Gandubhai Parmar V/s Harjivanbhai Dhanjibhai Pitroda & Anr., First Appeal No. 2722/2017, Honourable High Court of Gujarat.**
- (xiv) **Jasodaben Widow of Jagdishchandra Keshavlal Sharma & Ors. V/s Mukeshbhai Ramanbhai Patel & Ors.,**

**First Appeal No. 4509/2007,  
Honourable High Court of Gujarat.**

- (xv) **Hare Krushna Mahanta V/s Himadari Sahu & Anr.,  
Civil Appeal No. 2204 of 20125,  
Honourable Supreme Court.**
- (xvi) **Moohammadavesh Bashirahemad Aakhuji V/s  
Maheshkumar Laljibhai Damor,  
First Appeal No. 4305/2018,  
Honourable High Court of Gujarat.**
- (xvii) **Thakorbbhai Udadiyabhai Gamit V/s Anilkumar  
Chimanbhai Patel & Ors., First Appeal No. 2464/2013,  
Honourable High Court of Gujarat.**
- (xviii) **Legal Heirs of Khodabhai Khegarbbhai Vankar & Ors. V/s  
Executive Engineer & Ors., First Appeal No. 1040/2013,  
Honourable High Court of Gujarat.**
- (xix) **Manharbbhai Somabhai Patel V/s Kalpeshkumar Mulajibhai  
Darji & Anr., First Appeal No. 2041/2022,  
Honourable High Court of Gujarat.**
- (xx) **Udesinh Chattrasinh Rathva V/s Dilipkumar Prithvisinh  
Bihola & Anr., First Appeal No. 541/2024,  
Honourable High Court of Gujarat.**
- (xxi) **Nagappa V/s Gurudayal Singh and Others,  
AIR 2003 SC 674, Honourable Supreme Court.**

**(b) Opponent No. 1:**

The learned advocate for the opponent No. 1 herein, that is, the driver-cum-owner of Eeco car bearing registration No. GJ-21-CA-9487 as per the RC Book, would advance his oral arguments mainly stating that the claim petition of the applicant herein is not tenable and maintainable at law, that the present claim petition suffers from the bar of non-joinder of necessary parties, that the opponent No. 1 has been wrongly impleaded to the petition, that moreover, all the allegations leveled in the claim petition by the applicant like accident, injuries, disabilities, expenses incurred by the applicant herein, income and liability are put to strict to strict

proof of the applicant herein, that as regards the negligence, the present opponent has stated that at the time of the accident, the applicant himself was driving his motorcycle bearing registration No. GJ-9-BD-5760 in full speed, rash and negligent manner and violating traffic rules and as he lost control over his motorcycle, fell down on the road whereas the aforesaid Eeco car has been falsely implicated in the claim petition, that he has further submitted that at the time of the alleged vehicular accident, the vehicle in the form of Eeco car bearing registration No. GJ-21-CA-9487 was insured with the opponent No. 3 herein and therefore, the opponent No. 1 is not liable to pay any compensation to the applicant herein and opponent Insurance Company is liable to indemnify and pay compensation to the applicant herein.

**(c) Opponent No. 2;**

The opponent No. 2 herein, that is, the owner of Eeco car bearing registration No. GJ-21-CA-9487 as per the Insurance Policy thereof, would argue and submit that there is no reason for the present applicant to file such type of claim petition, that until and unless the allegations leveled by the applicant herein like vehicular accident, injuries, resultant disabilities, huge expenses incurred by the applicant herein, his income from the salary in the school at Berna and liability, the present opponent does not become liable for the compensation, that as regards the negligence, it has been submitted that in fact, the accident is the result of rash and negligent driving on the part of the applicant himself and therefore, the present opponent is not liable to pay any compensation, that moreover, the present opponent No. 2 had

purchased the Eeco car bearing registration No. GJ-21-CA-9487 by availing the loan from Kotak Mahindra Bank Ltd. and he was paying monthly installments regularly as well, but on account of COVID-19, he lost his income and could not pay the installments and therefore, the bank seized the said vehicle and without any intimation to the present opponent, the bank sold out the said vehicle and he has just come to know about the present claim petition after receiving the notice and in these circumstances, the Insurance Policy has been missed to be transferred on the name of the new purchaser of the said Eeco car and therefore, the present opponent No. 2 is not liable to pay any compensation to the present applicant.

**(d) Opponent No. 3:**

The learned advocate for the opponent No. 3 herein, that is, Insurance Company of the Eeco car bearing registration No. GJ-21-CA-9487, would submit his written arguments vide Exhibit 78 mainly stating that the material allegations made in the present claim petition are false and the petition is not maintainable either on the facts or law, that the Insurance Policy is a contract between the policy holder and the insurer, that in the absence of the new vehicle owner's name on the motor Insurance Policy, there exists no valid contract between him and the Insurance Company and hence, any accidental damage suffered by the new owner is not admissible under the previous Policy, that after purchasing a used car, Section 157 of the Motor Vehicles Act casts duty on the new vehicle owner to get the Insurance Policy transferred in his or her name by applying to the Insurance Policy within 14 days of the purchase and for these 14 days, only the third party Section of the

Insurance Policy gets transferred, moreover, at the time when the accident took place, the vehicle stood transferred from the insured and such transfer was not intimated to them within the period contemplated under Section 157 (2) of the Motor Vehicles Act and as per the terms and conditions of the Insurance Policy, moreover, that all the allegations leveled in the claim petition by the applicant like accident, injuries, disabilities, expenses incurred by the applicant herein, income and liability are also not correct which the applicant herein must prove on record, that as regards the negligence, as per the police papers, the Eco car bearing registration No. GJ-21-CA-9487 was not responsible for the accident in any manner as the accident took place merely on account of absolute negligence of the applicant herein, that considering the place of occurrence, the accident occurred at Akodara crossroads where an intersection point is situated which requires extra caution, the applicant himself has admitted that he was traveling from Himmatnagar towards Nikoda, but at every driver has an obligation to drive at a reduced speed and with high alertness which he has not and the accident took place, that Section 112 of the Motor Vehicles Act prescribes general speed limits and Section 183 mandates driving within safe limits at intersections, which the applicant herein has breached, that the applicant herein was not wearing helmet as mandated under Section 129 of the Act and no independent eye-witness was produced by the applicant herein to corroborate his version about his careful driving and considering the aforesaid reasons, the opponent Insurance Company is not liable to indemnify and pay compensation to the applicant herein, that considering the

aforesaid aspects, this is a clear-cut case of contributory negligence to the minimum extent of 40% to 70%, that as regards the quantum, the income claimed by the applicant is his income at present only and future prospective income of Rs. 70,000/- plus is speculative and unsubstantiated, that since the applicant is a Government employee approaching retirement age, the multiplier must account for remaining service period, that as regards the rate of interest on compensation, if any, the rate of interest to be awarded in claim petitions is guided by binding Honourable Supreme Court precedents which limit it to the bank rate or a rate commensurate with prevailing economic conditions.

**[5] Outlining issues raised by, legal framework, dissection whereof, factual matrix emerging from evidence and conclusion on the basis of findings;**

The present inquiry quests for the just compensation as expected in the relevant legal provisions, ratio of the precedents operating in the sphere and set of facts and circumstances being inferred from the evidence on record. In this regard, the Tribunal ought to set-out the legal rules empowering processually and substantially adjudication of the rights, liabilities and quantum of just compensation to be arrived on the basis of various factors coming to the fore from the combination of legal framework, precedents and factual matrix.

Before venturing into legal and factual aspect, let us have glanced at the issues that have been raised by the present proceedings;

**(A) Issues:**

(i) Regard being had to the rival assertions, denials and facts emerging from the entire record in this proceeding, the issues seeking their resolutions vide Exhibit 23 expresses themselves in ensuing manner;

- 1) Whether it is proved that the applicant sustained injuries on account of rash and negligent driving on the part of the driver of the vehicle involved in the accident ?
- 2) What amount, if any, the claimant is entitled to get by way of compensation and from which of the opponents and at what rate of interest ?
- 3) What order and award ?

(ii) The conclusion and findings to the said issues are as follows;

- 1) Partly in the affirmative.
- 2) In the affirmative.
- 3) As per final order.

It is worth now turning to the legal framework governing rights, liabilities and quantum of just compensation.

**(B) Legal framework governing the present proceeding and dissection thereof;**

*The Motor Vehicles Act, 1988 is the complete code in itself to adjudicate and determine rights, liabilities and quantum of just compensation. The question of awarding just compensation governs by various provisions of the Act, but the main source thereof is Section 166 and 163-A. In the present case, the relevant provisions are enshrined in **Section 166** of the said Act which goes in following fashion:*

*“(1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of section 165 may be made-*

*(a) by the person who has sustained the injury; or*

*(b) by the owner of the property; or*

*(c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or*

*(d) by any agent duly authorized by the person injured or all or any of the legal representatives of the deceased, as the case may be :*

*Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application.*

*(2) Every application under sub-section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides, and shall be in such form and contain such particulars as may be prescribed:*

*Provided that where no claim for compensation under section 140 is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant.*

*(3) The Claims Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of section 158 as an application for compensation under this Act.”*

**163A. Special provisions as to payment of compensation on structured formula basis**

*“(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle of the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.*

*Explanation.-For the purposes of this sub-section, "permanent disability" shall have the same meaning and extent as in the Workmen's Compensation Act, 1923.*

*(2) In any claim for compensation under sub-section (1) the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of other person.*

*(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule.”*

Other relevant provisions of the Act which govern the present case go in the ensuing manner:

**163B. Option to file claim in certain cases**

“Where a person is entitled to claim compensation under Section 140 and Section 163A, he shall file the claim under either of the said sections and not under both.”

**140. Liability to pay compensation in certain cases on the principle of no fault**

“(1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

(2) The amount of compensation which shall be payable under sub-section (1) in respect of the death of any person shall be a fixed sum of a [fifty thousand rupees] and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of a [twenty-five thousand rupees].

(3) In any claim for compensation under sub-section (1) the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

(4) A claim for compensation under sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement,

(5) Notwithstanding anything contained in sub-section (2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is also liable to pay compensation under any other law for the time being in force :  
Provided that the amount of such compensation to be given under any other law shall be reduced from the amount of compensation payable under this section or under Section 163-A.”

**141. Provisions as to other right to claim compensation for death or permanent disablement**

“(1) The right to claim compensation under section 140 in respect of death or permanent disablement of any person shall be in addition to a [any other right except the right to claim under the scheme

referred to in section 163A (such other right hereafter] in this section referred to as the right on the principle of fault) to claim compensation in respect thereof under any other provision of this Act or of any other law for the time being in force.

(2) A claim for compensation under section 140 in respect of death or permanent disablement of any person shall be disposed of as expeditiously as possible and where compensation is claimed in respect of such death or permanent disablement under section 140 and also in pursuance of any right on the principle of fault, the claim for compensation under section 140 shall be disposed of as aforesaid in the first place.

(3) Notwithstanding anything contained in sub-section (1) where in respect of the death or permanent disablement of any person, the person liable to pay compensation under section 140 is also liable to pay compensation in accordance with the right on the principle of fault, the person so liable shall pay the first-mentioned compensation and-

(a) if the amount of the first-mentioned compensation is less than the amount of the second-mentioned compensation, he shall be liable to pay (in addition to the first-mentioned compensation) only so much of the second-mentioned compensation as is equal to the amount by which it exceeds the first-mentioned compensation;

(b) if the amount of the first-mentioned compensation is equal to or more than the amount of the second-mentioned compensation, he shall not be liable to pay the second-mentioned compensation.”

#### **142. Permanent disablement**

“For the purposes of this Chapter, permanent disablement of a person shall be deemed to have resulted from an accident of the nature referred to in sub-section (1) of section 140 if such person has suffered by reason of the accident, any injury or injuries involving :-

(a) permanent privation of the sight of either eye or the hearing of either ear, or privation of any member or joint; or

(b) destruction or permanent impairing of the power of any member or joint; or

(c) permanent disfiguration of the head or face.”

#### **(C) Dissection as regards the statutory framework:**

That the present proceeding quests for the adjudication of the just compensation in the sphere of the disablement that is be caused in the vehicular accident. To pinpoint the just compensation, the Tribunal ought to keep in focus rules governing the determination of such compensation. The just compensation means restoring the applicant of vehicular accident to the position and status which was prior to the accident. This is an exercise to make good the loss which is being suffered as a result of wrong done through monetary award in fair, reasonable and equitable manner. The Tribunal requires to be proceeded in determination of the damages objectively. The objectivity is the sentinel protecting against the vices of arbitrariness,

capriciousness, whimsicalness and individual subjectivity being perpetuated in the decision making process. The objectivity, in the same vein, does not permit rigidity. The certain aspect in the adjudication of disablement necessitates rational and logical conjectures vis-a-vis the nature of disability and consequences flowing therefrom. The disablement brings with it not only physical, but as well psychological and other consequences. The disablement may as well, of course not in all cases, reduce the earning capacity.

The dissection of the statutory provisions brings out the object, rights, liabilities and rules governing fixation of just compensation in the sphere of disablement. All these aspects have been dealt with and succinctly culled out by Hon'ble Apex Court in **Rajkumar v. Ajaykumar, 2011 ACJ-I**. The observations in this regard have been delineated in following words;

**“General principles relating to compensation in injury cases**

The provision of the Motor Vehicles Act, 1988 ('Act' for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned.

The heads under which compensation is awarded in personal injury cases are the following : Pecuniary damages (Special Damages)

(i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising :

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses. Non-pecuniary damages (General Damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity).

In routine personal injury cases, compensation will be awarded only

under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life. Assessment of pecuniary damages under item (i) and under item (ii)(a) do not pose much difficulty as they involve reimbursement of actuals and are easily ascertainable from the evidence. Award under the head of future medical expenses - item (iii) -- depends upon specific medical evidence regarding need for further treatment and cost thereof. Assessment of non-pecuniary damages - items (iv), (v) and (vi) -- involves determination of lump sum amounts with reference to circumstances such as age, nature of injury/deprivation/ disability suffered by the claimant and the effect thereof on the future life of the claimant. Decision of this Court and High Courts contain necessary guidelines for award under these heads, if necessary. What usually poses some difficulty is the assessment of the loss of future earnings on account of permanent disability - item (ii)(a). We are concerned with that assessment in this case.

**Assessment of future loss of earnings due to permanent disability**  
Disability refers to any restriction or lack of ability to perform an activity in the manner considered normal for a human-being. Permanent disability refers to the residuary incapacity or loss of use of some part of the body, found existing at the end of the period of treatment and recuperation, after achieving the maximum bodily improvement or recovery which is likely to remain for the remainder life of the injured. Temporary disability refers to the incapacity or loss of use of some part of the body on account of the injury, which will cease to exist at the end of the period of treatment and recuperation. Permanent disability can be either partial or total. Partial permanent disability refers to a person's inability to perform all the duties and bodily functions that he could perform before the accident, though he is able to perform some of them and is still able to engage in some gainful activity. Total permanent disability refers to a person's inability to perform any avocation or employment related activities as a result of the accident. The permanent disabilities that may arise from motor accidents injuries, are of a much wider range when compared to the physical disabilities which are enumerated in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 ('Disabilities Act' for short). But if any of the disabilities enumerated in section 2(i) of the Disabilities Act are the result of injuries sustained in a motor accident, they can be permanent disabilities for the purpose of claiming compensation.

The percentage of permanent disability is expressed by the Doctors

*with reference to the whole body, or more often than not, with reference to a particular limb. When a disability certificate states that the injured has suffered permanent disability to an extent of 45% of the left lower limb, it is not the same as 45% permanent disability with reference to the whole body. The extent of disability of a limb (or part of the body) expressed in terms of a percentage of the total functions of that limb, obviously cannot be assumed to be the extent of disability of the whole body. If there is 60% permanent disability of the right hand and 80% permanent disability of left leg, it does not mean that the extent of permanent disability with reference to the whole body is 140% (that is 80% plus 60%). If different parts of the body have suffered different percentages of disabilities, the sum total thereof expressed in terms of the permanent disability with reference to the whole body, cannot obviously exceed 100%.*

*Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings, would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation. What requires to be assessed by the Tribunal is the effect of the permanently disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation (see for example, the decisions of this court in Arvind Kumar Mishra v. New India Assurance Co. Ltd. - 2010 ACJ 2867 (SC) and Yadava Kumar v. D.M., National Insurance Co. Ltd. - 2010 ACJ 2713 (SC).*

*Therefore, the Tribunal has to first decide whether there is any permanent disability and if so the extent of such permanent*

disability. This means that the tribunal should consider and decide with reference to the evidence: (i) whether the disablement is permanent or temporary; (ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement, (iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is the permanent disability suffered by the person. If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity.

Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent ability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred percent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of 'loss of future earnings', if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser

*emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity. It may be noted that when compensation is awarded by treating the loss of future earning capacity as 100% (or even anything more than 50%), the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation. Be that as it may.”*

**(D) Factual matrix emerging from evidence:**

*In the factual matrix, the appraisal, evaluation and assessment of evidence proceeds in three segments, viz. (i) rash and negligent driving resulting into vehicular accident, (ii) quantum of compensation and (iii) liability of payment of compensation.*

**REASONS**

**[6] Issue No. 1:**

**(i) Rash and negligent driving resulting into vehicular accident;**

Having regard to the oral deposition of the applicant herein in the form of affidavit vide Exhibit 29, complaint vide Exhibit 31 and panchnama of the scene of occurrence vide Exhibit 32, it is stated by the applicant herein that the accident in question has occurred on 28<sup>th</sup> February, 2022, the applicant herein had met with the vehicular accident near Akodara crossroads, that the complainant came to know from his relative at the hospital that the accident had occurred when the applicant herein was returning home from Berna School by driving his motorcycle bearing registration No. GJ-9-DB-5760 and the car bearing registration No. GJ-21-CA-9487 being driven by its driver rashly and negligently had dashed with his motorcycle and caused the accident.

During the cross-examination made by the learned

advocate for the opponent No. 2, the following facts have come to the fore;

- (1) That his service continues at present;
- (2) That he gets the salary regularly;
- (3) That he had resumed his duties after producing the fitness certificate;
- (4) That he has not made available any documentary evidence showing that he had engaged an attendant on daily basis;
- (5) That the motorcycle bearing registration No. GJ-9-BD-5760 is of his ownership;
- (6) That motorcycle could only be driven if the driving licence is held;
- (7) That while driving the motorcycle, helmet is compulsory to be worn;
- (8) That he had worn the helmet at the time of the accident;
- (9) That the road leading from Himmatnagar to Dhansura is straight and is not separated by any divider;
- (10) That at the time of the accident, he was going from Himmatnagar to Nikoda and the car was coming from his opposite side;
- (11) That the present accident had occurred on account of head on collision between both the vehicles;
- (12) That his salary gets deposited directly in the bank;
- (13) That he has not made available any Income-tax Return to show his income;
- (14) That he has not made available the statement or passbook of the bank wherein his salary gets deposited;

- (15) That his date of birth is 12<sup>th</sup> May, 1967;
- (16) That he has not made available any document showing that he gets any income from agriculture;
- (17) That his increment has not been stopped on account of the present vehicular accident;
- (18) That he has not taken any treatment by Dr. Nilesh Acharya.

[7] The documentary evidence made available on the record of this petition are consisting of various documents and first of such documents is the complaint which has been lodged by Shankarbhai Dhulabhai Patel vide Exhibit 31 wherein he has stated that on 28<sup>th</sup> February, 2022, he received a telephonic message from his nephew that the applicant had met with a vehicular accident and therefore, he was shifted from the place of occurrence to Civil Hospital, Himmatnagar, that on reaching the hospital, he saw that the applicant herein was semi-conscious and he came to know from his relative about the vehicular accident that the driver of the Eeco car bearing registration No. GJ-21-CA-9487 had dashed his car with the motorcycle of the applicant herein and caused the accident.

[8] Another documentary evidence made available on the record of the present petition is in the form of panchnama of the scene of occurrence vide Exhibit 31. The topographical situation of the place of incident is verified from this panchnama which depicts that the place of occurrence is situated in the vicinity of village Akodara, on the Akodara Ranasan road where shattered pieces of parts of the Eeco car and motorcycle were lying, but no other marks were found, that at the eastern side of the road, one

motorcycle was lying which was bearing registration No. GJ-9-DB-5760, its head light and side light were broken, the engine had sustained scratches on its right side, the motorcycle was of Hero Delux make and on account of the accident, the motorcycle had sustained damage to the tune of Rs. 4,000/-, near that motorcycle, one Eeco car of Maruti company make was lying which was bearing registration No. GJ-21-CA-9487, its front side bumper was broken, its right side head light and bonnet were broken, the driver side wheel was bent, scratches were found on the car on account of the accident and in all, the car had sustained damage to the tune of Rs. 17,000/-, that after leaving the east side edge of the road, the field was situated, at the western side, after leaving the road, another field was situated, the road situated towards the southern side was leading to village Ranasan whereas the northern side was leading towards village Akodara. After completing the investigation, the charge-sheet was laid by the police against the opponent No. 1 herein made available on the record vide Exhibit 55.

[9] On appreciation of the oral as well as documentary evidence, it emerges that the applicant herein was proceeding from Himmatnagar towards his home situated at village Nikoda. The topographical situation further reveals from the panchnama vide Exhibit 32 that the place of occurrence was situated on the road from Akodara to Ranasan and precisely near Akodara crossroads. At the crossroads, the Eeco car was coming from the opposite side. The rashness and negligence on the part of the opponent No. 1 herein, who was driving the Eeco car can be more attributed because while coming from the opposite side at the crossroads, the

speed of the vehicle coming from the opposite side should be reduced so that its driver can maintain his lane, but instead, as the opponent No. 1 herein was in excessive speed, he lost his control over his Eeco car and dashed on the right side of the motorcycle of the applicant herein which reflects from the panchnama of the scene of occurrence as well. Therefore, it can be clearly inferred that the Eeco car came on the absolutely wrong side looking to the manner of the damage the motorcycle of the applicant has sustained.

At the same time, while going through the panchnama of the scene of occurrence vide Exhibit 32, it becomes crystal clear that it was head-on collision between the motorcycle of the applicant and the Eeco car of the opponent No. 1. The applicant herein himself has stated in his cross-examination that the road from Himmatnagar to Dhansura was straight and there was no divider on the road, meaning thereby, the road was not separated by divider. Therefore, considering these aspects in general and the facts in particular that there were crossroads and the road was not separated by any divider, both the drivers, that is the applicant herein and the opponent No. 1 herein, ought to have reduced the speed of their respective vehicles, but they failed to do so. This conduct on the part of the drivers of both the vehicles clearly conveys rashness and negligence on their part. Therefore, it is concluded that the applicant who was driving the motorcycle bearing registration No. GJ-9-DB-5760 and the opponent No. 1 who was driving the Eeco car bearing registration No. GJ-21-CA-9487 are 30%-70% liable in causing the accident respectively. In this background, the issue No. 1 is held partly in

the affirmative.

**Issue No. 2:**

[10] As regards the quantum of compensation in cases of disablement, the Tribunal requires to determine the sufferance of kind of disablement. The disablement may be of two kinds; (a) permanent disablement and (b) temporary disablement.

**(a) Permanent disablement:**

Permanent disablement is the physical incapacity that remains for the remainder life of the injured after extending the full treatment and achieving the maximum bodily improvement or recovery at the end of period of recuperation. Permanent disablement may further be divided into two parts viz. permanent total disablement and permanent partial disablement. The later means the disability referring to a persons is ability to perform all the duties and bodily functions that he could perform before the accident, though he able to perform some of them and is still able to engage in some gainful activity. As regards formal one, it can be said that the person is not able to perform any avocation or employment related activities as a result of the accident.

**(b) Temporary disablement:**

Temporary disablement is the physical incapacity or loss use of some part of the body owing to the injury. Such incapacity or loss will cease to exist at the end of the period of treatment and recuperation.

The total highest percentage of the disability is the 100 percent. It can never go beyond it. The percentage of disablement

can be expressed vis-a-vis body as a whole or a particular limb. The inability or disability in respect of a particular limb may be high but consideration thereof qua whole body may come-down substantially.

**(c) Bifurcation of heads under which compensation being awarded in the event of personal injury:**

These heads may be divided into two parts; (i) pecuniary damages or special damages and (ii) non-pecuniary damages or general damages.

The ensuing heads are covered under the pecuniary damages:

- (i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food and miscellaneous expenditure;
- (ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:
  - (a) Loss of earning during the period of treatment;
  - (b) Loss of future earning on account of permanent disability;
- (iii) Future medical expenses;

Non-pecuniary damages comprises of the heads hereinafter referred to;

- (a) damages for pain, suffering and trauma as a consequences of injury;
- (b) Loss of amenities (and/or loss of prospects of marriage) and
- (c) Loss of expectation of life (shortening of normal longevity).

This is the case where, of course, the applicant herein has suffered the injuries including the fractures on various part of the body, under the circumstances, let us assess the compensation under the various heads:

**(i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food and miscellaneous expenditure;**

[11] Under this head, the cumulative expenditure in respect of various nature ought to be adjudged. Some of them operate on the basis of the evidence led on the record by the applicant herein, let us first have glanced at such evidence helping the Tribunal in reaching just and real expenditure;

As regards this head in general and each sub-head in particular, the applicant herein has deposed in his affidavit vide Exhibit 29 wherein general statements in respect of this head go in following manner;

That the applicant had, as a result of present vehicular accident, sustained injuries including two fractures. To get treatment, the applicant was first shifted from the place of occurrence to the Civil Hospital, Himmatnagar and for further treatment, he was shifted to Jupiter Hospital, Himmatnagar where he was admitted and further treated as an indoor patient. On getting discharged from the hospital, the applicant was required to frequently visit for follow up treatment by commuting through special vehicle. As per the said deposition, the applicant bore huge expenditure for medicines, special diet, transportation etc.

In corroboration thereof, the various medical bills, receipts, case papers etc. in respect of his treatment are made available in the evidence vide Exhibit 60 to Exhibit 65 and sum total of the various expenditure narrated in the said bills runs into Rs. 3,34,648/- vide bills and receipts made available on record as aforesaid. For other expenditure, no further evidence has been led, but it should be expended. Under the circumstances, the following award needs to be made under the various sub-heads of this head;

Rs. 3,34,648/-	Medical expenses
Rs. 0,10,000/-	Special diet expenses
Rs. 0,05,000/-	Attendants' charges
<u>Rs. 0,02,500/-</u>	Transportation charges
<b><u>Rs. 3,52,148/-</u></b>	<b>Total compensation under this head</b>

**(ii) Damages for pain, suffering and trauma as a consequences of injury:**

[12] It has been narrated in the foregoing head that what are the injuries and its impact on the victim. The various case papers in respect of injuries and treatment clearly reveal that the victim has suffered injuries like right femur shaft fracture open grade 3A, right tibia shaft fracture, CLW over right thigh, he was operated for above injuries, debridement, nail was fixed for tibia fracture. The applicant herein had pain and deformity of right lower limb, limping of gait, restriction of movements of joints, was unable to squat and unable to stand on right lower limb independently. These injuries including fractures would have caused unbearable tremendous pain and sufferings to the victim herein. The

applicant herein would have confined to home and the injuries would have definitely prevented him from pursuing day to day pursuits of life and at the same time, unavoidable daily activities would have to put-up or do per force by facing severe inconveniences. This naturally entitles the victim to have certain monetary relief. Therefore, considering overall aspect of injuries and facts and circumstances emerging from the record, the applicant herein deserves to get compensation in this regard to the tune of Rs. 10,000/-.

**(iii) Loss of earning during the period of treatment:**

[13] In this regard, the claimant herein has deposed in his deposition that at the time of the accident, he monthly salary was to the tune of Rs. 41,894/-, he was bedridden for long time which had resulted into loss of income for such period. The applicant herein has as well admitted during his cross-examination that his service still continues, he gets the salary regularly, his salary gets deposited directly in the bank and his increment has not been stopped on account of the accident and consequent injuries. As regards his monthly salary at the time of the accident, the applicant herein has made available on the record his bank statement vide Exhibit 38 and the salary certificate in original in respect of his salary for the month of January 2022 issued by Head Master, Nootan High School, Berna vide Exhibit 46.

To prove the aforesaid facts, the applicant herein has examined the witness by name Mr. Hiteshkumar Ramjibhai Patel vide Exhibit 45 wherein the witness has stated that he is the Principal, Nootan High School, Berna since 1<sup>st</sup> September, 2012,

that he knows the applicant herein who was doing service as peon in the school, that as the applicant had sustained injuries in the accident on 28<sup>th</sup> February, 2022, he had been on leave, that the salary of employees in their school is credited in the bank by the office of Mr. District Education Officer and statement in that regard gets generated online, that as per the online statement in respect of the present applicant in respect of salary paid to him by the Department of Education, Commissioner of Schools, Gandhinagar and as per the statement, the basic pay was to the tune of Rs. 31,500/-, washing allowance to the tune of Rs. 60/-, dearness allowance to the tune of Rs. 8,820/-, hours rent allowance to the tune of Rs. 1,214/-, medical allowance to the tune of Rs. 300/- which formed the gross salary to the tune of Rs. 41,894/- for the month of January, 2022. The said certificate has been made available on the record vide Exhibit 46, that online generated statement in respect of his salary is made available on the record vide Exhibit 47, that as per the attendance sheet of their school vide Exhibit 48, the applicant herein had been on earned leave from the period 1<sup>st</sup> March, 2022 to 30<sup>th</sup> April, 2022 for 61 days, that the leave certificate of the applicant has been made available on the record vide Exhibit 49, that if the applicant herein had not availed the aforesaid 61 days' leave on account of the accident, he would have got the said leave encashed at the time of his superannuation.

The aforesaid witness has been cross-examined by the learned advocate for the opponent No. 3 herein and during the cross-examination, the following facts came to the fore;

- (1) That he is the custodian of all the records of the employees in the school like salary, attendance sheet and service books etc.;
- (2) That the salary of employees is made through online portal and the data in that regard is submitted to the office of Mr. District Education Officer and on that basis, the salary is directly credited to the concerned employees by Treasury office;
- (3) That all the data are computerized and are preserved in the computer;
- (4) That as all the data are computerized, he has not made available the certificate under Section 65-B of Indian Evidence Act;
- (5) That the applicant herein was serving in their school before the accident and even at present, after the accident, his service continues;
- (6) That on account of the accident, the applicant herein has not been terminated from service;
- (7) That during the period of accident in question, the applicant has been regularly paid the salary;
- (8) That the applicant herein has been paid increments after the accident as per Government rules and regulations;
- (9) That That the salary of the applicant herein has increased from time to time;
- (10) That as the applicant herein was serving in their school being Class-IV employee, he is not liable to pay any Income-tax and no TDS is deducted;
- (11) That he has neither brought with him the Form No. 16G in respect of annual salary paid to the applicant herein nor has made available the same on the record;

(12) That no fitness certificate was taken from the applicant herein at the time of resuming the duties;

(13) That Class-IV employees working in their school have to carry out the work of cleaning, ringing bell from time to time, to water-service, gardening, to shift the benches and other tasks;

(14) That the permission to have an attendant with the applicant herein has not been granted by their school;

(15) That the applicant herein has been drawing the salary continuously and there is no loss in his income.

[14] First of all, as regards his salary income, the applicant herein has made available on the record his bank statement vide Exhibit 38, copy of salary certificate of the applicant herein issued by the Head Master, Nootan High School, Berna for the month of January 2022 vide Exhibit 46 and copy of pay bill of the applicant herein for the month of February 2022 vide Exhibit 47. On perusal of the salary certificate vide Exhibit 46, it shows the gross salary of the applicant herein for the month of January 2022 to the tune of Rs. 41,894/-. The present applicant is serving as peon in a Government school and therefore, he is termed to be a Government employee and for determination of monthly income in case of a Government employee, his basic pay, dearness allowance and house rent allowance should be taken into consideration, whereas Income-tax and Professional-tax should be deducted from the figure derived therefrom. The basic pay of the applicant herein vide the salary certificate issued by the school vide Exhibit 46 was to the tune of Rs. 31,500/-, dearness allowance was to the tune of Rs. 8,820/- and house rent allowance to the tune of Rs. 1,214/-. The total of the said three figures comes

to the tune of Rs. 41,534/-. The income of the applicant herein was not taxable as categorically admitted in the cross-examination by the witness examined vide Exhibit 45 and therefore, no Income-tax has been deducted. Therefore, Professional-tax to the tune of Rs. 200/- shall be deducted which leaves the remainder to the tune of Rs. 41,334/-, on which, the compensation shall be assessed henceforth. As regards the income of the applicant herein from agriculture activities, he was doing full time service or as a regular employee of the school which is situated far from his village, say about twelve kilometers which makes the say of the present applicant unbelievable as he would not be able to look after such activities on account of his service at a different village. Moreover, he has not made available on the record a single oral or documentary evidence on the record to prove his income from such source and therefore, the income from agriculture activities of the applicant is not being considered.

[15] Considering the injuries and attending circumstances emerging from the record, it comes to the fore that the claimant herein seems to have been on commuted leave from 1<sup>st</sup> March, 2022 to 30<sup>th</sup> April, 2022 and from 1<sup>st</sup> April, 2022 to 30<sup>th</sup> April, 2022, that is, for 61 days which comes to 122 half-pay leave as reflects from the copy of attendance sheet of the present applicant made available on the record vide Exhibit 48. The witness examined in the form of Mr. Principal vide Exhibit 45 has specifically admitted in his cross-examination that had the applicant herein not been on the aforesaid 61 leave on account of the accident in question, he could have encashed the same at the time of his superannuation and therefore, it can be concluded that

the applicant herein deserves to be awarded compensation under the present head to the tune of Rs. 41,334/- x 2 months = Rs. 82,668/-.

**(iv) Loss of future earnings on account of permanent disability:**

[16] This drives the Tribunal to glance over the medical papers that have been received in evidence, describing the injuries sustained by the applicant herein and the treatment imparted to him in various hospitals.

[17] Regard being had to the injuries narrated in the foregoing part of the present judgment, the Tribunal ought to ascertain the effect the permanent disability on the actual earning capacity. This process involves three steps; (i) to ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability, (ii) to ascertain his avocation, profession and nature of work before the accident and his age, and (iii) the third step embraces three sub-steps, (a) the claimant is total disabled from earning any kind of livelihood, (b) in spite of the permanent disability, the claimant could still effectively to carry on the activities and functions, which he was earlier carrying on, and (c) the claimant is prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood.

**[18] As regards the future prospects in the present case, first of all, the applicant herein is in Government service as peon in a high**

school. At the relevant time, as discussed in the preceding part of the present judgment, he was drawing salary to the tune of Rs. 41,894/- per month. The applicant herein has categorically admitted in his cross-examination that at present, his service continues and he gets regular salary and that on account of the accident, not a single increment has been stopped which means that his salary has increased. This deposition clearly suggests that in spite of the vehicular accident in question and consequent disablement, the applicant herein does not seem to have suffered future economic loss as the salary income of the applicant herein has increased even after the accident and on the contrary, his salary has increased as specifically admitted by him during his cross-examination. Unfortunately, the entire evidence does not bring on record an iota of evidence which indicates any material worth its name which allows the Tribunal in reaching the conclusion on this aspect of considering future prospects of the applicant herein.

Thus, there is nothing on the record indicating any future loss of earning being suffered by the applicant herein, but the Tribunal cannot lose sight of the fact that on account of injuries, his bodily comfort and other amenities be impacted upon.

**(v) Loss of Amenities:**

[19] Under this head, let us examine the evidence on record. The victim herein is on oath categorically deposing that he has suffered injuries like right femur shaft fracture open grade 3A, right tibia shaft fracture, CLW over right thigh, he was operated for above injuries, debridement, nail was fixed for tibia fracture, he was limping, he had mild to moderate degree of loss of power of hips, gluted muscles and knee and ankle etc. The applicant

herein had pain and deformity of right lower limb, limping of gait, restriction of movements of joints, was unable to squat and unable to stand on right lower limb independently, difficulty in climbing and walking on sloped surface etc. There is no material on record which renders them either false or non-believable. Thus, this does not mean that the present accident has had no telling impact on the victim's amenities for the factors like **not in a position to do the work as before as the applicant herein had pain and deformity of right lower limb and restriction of movements of joints, he was unable to sit cross-legged, to squat and to stand on right lower limb etc.** Even he must have gross difficulties in performing heavy work etc. and not in a position to do the work in the same manner as prior to the accident, particularly considering the fact that he was serving as peon in the school which requires constant physical movements. Moreover, the applicant herein, as a result of the injuries he sustained, has also deprived of enjoying his life and other amenities including psychological well-being as and when he countered these constraints, psychological ache or pang\* would always continuously and forever be there as long as his life lasts. Under no circumstance, the victim can be restored to the bodily position and well-being as it was prior to the accident in question.

In the aforesaid backdrop, to heal the said loss of amenities of the life, the victim herein deserves to get **Rs. 6,20,040/- [Rs. 41,334/- monthly income x 25% disability body as a whole = Rs. 10,334/- monthly loss of income x 12 months = Rs. 1,24,008/- yearly loss of income x 5 multiplier = Rs. 6,20,040/- as loss of amenities** in the life on account of the vehicular accident in question. This line of treatment is being fortified from

the decision of **Honourable High Court of Gujarat** in **Manilal Savjibhai Changela V/s Makanbhai Bhimjibhai Patel & 2, First Appeal bearing No. 3335/2008** wherein the **Honourable High Court of Gujarat** has held as follows;

*“... Therefore, the future prospect is to be considered only after retirement and that has been rightly considered by the claims Tribunal that after retirement, he is at least entitled to multiplier of 5 as per decision of this Court reported in 1993 (2) GLR 1043.”*

**(iii) Liability of payment of compensation;**

[20] Law in respect of vehicular accident and awarding of compensation purely springs from and based upon the law of torts. The jurisprudence of tort enunciates tortious liability that arises from the breach of a duty that (i) is fixed by the law, (ii) is categorical in nature and owed to any person who is within the scope of the duty, and (iii) when breached, is redressable by an action for compensatory, unliquidated damages. As regards the driver's liability, it arises from his tortious act in the form of rash and negligent driving. The vehicular driver is obligated and having bounden duty by the rules prescribed that he must be careful in driving the vehicle. This duty vehicular driver owes to the general public who have access to all public roads. Any vehicular accident occurring on account of breach of that duty creating an obligation in the person who is tort-feasor. The tort is a civil wrong and its remedy lies in damages. The nature of tort encompasses and embodies within its sweep causing of and redressal in the form of compensation unliquidated. This liability of making available just compensation primarily rests in the tort-feasor, who is the driver-cum-owner in the present proceedings.

Consequently, the opponent No. 1 herein, driver-cum-owner as per the RC Book of the vehicle in the form of Eeco car bearing registration No. GJ-21-CA-9487, is liable to pay compensation to the applicant herein.

[21] The opponent No. 2 herein, Insurance Policy holder of the vehicle in the form of Eeco car bearing registration No. GJ-21-CA-9487 has as well challenged his liability on the ground that he had purchased the Eeco car bearing registration No. GJ-21-CA-9487 by availing the loan from Kotak Mahindra Bank Ltd. and he was paying monthly installments regularly as well, but on account of COVID-19, he lost his income and could not pay the installments and therefore, the bank seized the said vehicle and without any intimation to the present opponent, the bank sold out the said vehicle and he has just come to know about the present claim petition after receiving the notice and therefore, he should be exonerated from the liability to pay compensation to the applicant herein.

[22] As regards the liability of opponent No. 3, Insurance Company, the learned advocate for the opponent No. 3 has disputed the liability of the Insurance Company that the accident in this matter has had taken place on 28<sup>th</sup> February, 2022. At the time of the accident, the vehicle stood transferred from the insured and such transfer was not intimated to the insurer within the period contemplated under Section 157 (2) of the Motor Vehicles Act and as per the Insurance Policy terms and conditions as well, which is breach thereof and therefore, the Insurance Company should be exonerated.

[23] The factual matrix which governs the field on this aspect reveals that the vehicular accident herein has taken place on 28<sup>th</sup> February, 2022. The opponent No. 1, opponent No. 2 and opponent No. 3 herein have been stated to be the driver-cum-owner as per the RC Book, Insurance Policy holder and Insurance Company of Eeco car bearing registration No. GJ-21-CA-9487 at the relevant point of time. No registration particulars in respect of the said Eeco car have been made available on the record, but the Insurance Policy thereof has been made available on the record of the present petition vide Exhibit 35 showing the name of the insured being the opponent No. 2 herein and the validity period of Insurance in respect of third party from 12<sup>th</sup> June, 2019 to 11<sup>th</sup> June, 2022 covering the date of accident, that is, 28<sup>th</sup> February, 2022.

[24] In the earlier motor accident claim petitions, the present Tribunal has taken the view that on account of commission of breach of Section 157 (2) of Motor Vehicles Act, the Insurance Company gets exonerated from the insurable liability or violation of statutory mandate ceases the insurable liability. On making further research on this point, the Tribunal has come across **Honourable Apex Court** decision in **G. Govindan V/s New India Assurance Company Limited, 1999 (0) AIJEL-SC 9025** wherein Honourable Apex Court, of course, made observations under the old Act which go in following terms;

*“Thus, we are clearly fortified in our view that the insurable interest in the property is not necessary in the case of public liability insurance. The test is whether the liability under the statute ceased or not notwithstanding the passing of title and hence we respectfully dissent with the view expressed by various*

*High Courts that on the sale of the vehicle the insurable interest ceases and the policy lapses. We agree that any claim of the transferee in respect of his property and his person cannot be enforced against the insurance company. He being a stranger he cannot have any claim against the insurance company. But the third party risk is concerned so long the obligations under the statute are not fulfilled, as contemplated under sec. 31 read with sec. 94, he continues to have the insurable interest till such obligations are fulfilled.”*

X X X    X X X    X X X

*“The registration of the vehicle in the name of the transferee is not necessary to pass title in the vehicle. Payment of price and delivery of the vehicle makes the transaction complete and the title will pass to the purchaser. When the policy of insurance obtained by the original owner of the vehicle is composite one covering the risks for his person, property (vehicle) and the third party claim, on passing of title the transferee cannot enforce his claim in respect of any loss or damage to his person and vehicle unless there is a novation. So far the third party risk is concerned the proprietary interest in the vehicle is not necessary and the public liability continues till the transferor discharges the statutory obligation under Ss. 29-A and 31 read with S.94 of the Act. Till he complies with the requirement of S.31 of the Act, the public liability will not cease and that constitutes the insurable interest to keep the policy alive in respect of the third party risks are concerned. It must be deemed that the transferor allowed the purchaser to use the vehicle in a public place in the said transitional period and accordingly till the compliance of S.31. the liability of the transferor subsists and the policy is in operation so far it relates to the third party risks. We answer the second question accordingly.”*

Very interesting fact as well from Sub-section (1) of Section 157 arises, it is profitable to have glance at that Section which goes as follows;

*“Where a person in whose favour the certificate of insurance has been issued in accordance with the provisions of this Chapter transfers to another person the ownership of the motor vehicle in respect of which such insurance was taken together with the policy of insurance relating thereto, the certificate of insurance and the policy described in the certificate shall be deemed to have been transferred in favour of the person to whom the motor vehicle is transferred with effect from the date of its transfer.*

***Explanation;***

*For the removal of doubts, it is hereby declared that such deemed transfer shall include transfer of rights and liabilities of the said certificate of insurance and policy of insurance.”*

[25] Dissection thereof clearly brings about the mandate that with the transfer of vehicle, the certificate of insurance and the policy described in the certificate deems to have been transferred in favour of the person to whom motor vehicle is transferred with effect from the date of its transfer. This transfer takes place coupled with rights and liabilities of the said certificate of insurance and policy of insurance. Transference of rights and liabilities thereunder reduces the Sub-clause (2) of Section 157 to the level of merely procedure and nothing more. Simply putting transfer of policy takes place simultaneously along with the transfer of vehicle by virtue of operation of Sub-clause (1) of Section 157. Sub-section (2) of Section 157 only prescribes the procedure for setting the record correct and does not affect the operation of Sub-section (1). The transfer of policy no more depends on to be exercised by the insurance company or on the foundation of privity of contract between the insurer and the transferee of the vehicle from the holder of policy. On transfer, the policy continues as is attached with the vehicle. The contract between the insurer and transferee comes into existence by the principle of ‘deeming fiction’ engrafted in Sub-section (1) of Section 157. The contractual realm would be changed from transferor to transferee by force of statutory provisions which always dislodges or displaces normal principle of “privity of contract”. The statutory force or statutory contract on account of “deeming fiction” principle takes the place of contract of insurance / indemnification in-between the transferee and insurer instead of transferor and insurer. This contract does not allow the

insurable liability to be ceased on transfer of vehicle being taken place. This bare statutory provision along with the ratio laid down by Honourable Apex Court, the Insurance Company does not shirk its liability or responsibility of making good the award that may be passed. Normally the Insurance Policy covers three risks; (i) risk to the owner of vehicle, (ii) risk to the vehicle itself and (iii) risk to third party. Former two operate on the basis of contractual obligations or contract and last one operates on statutory plane. The contractual rights die with the termination of ownership or rights to vehicle, but the statutory right never ever extinguishes. Third party right has been created by statute called Motor Vehicles Act and such right can never be annihilated by an act of any party. Just compensation is the statutory right of the third party coupled with the protective umbrella of the insurer as the Motor Vehicles Act peremptorily obliges to have insurance for third party which is purely attached to the vehicle in question only. Accordingly, the argument in respect of exonerating the Insurance Company on account of Sub-section (2) of Section 157 of Motor Vehicle Act cannot be accepted and stands rejected.

[26] Thus, under the provisions of the Motor Vehicle Act, 1988, the insurer has been given all the rights to defend by putting forward all the defence available to insurer or his employee, agent etc. This statutory mandate coupled with contractual liability arising from the valid insurance cover vide Exhibit 35 in the form of indemnifying the relevant insured including third party acquiring the right to create obligation or liability in the insurer. This is how the contractual liability of the opponent No. 3 arises on account of aforesaid statutory mandate.

**(d) Awarding of interest;**

[27] Having regard to the contentions of the learned advocates for both the sides and the ratio laid down by **Honourable Apex Court** in **Abati Bezbaruah v. Dy. Director General, Geological Survey of India and Another [(2003) 3 SCC 148]** which laid down consideration of several factors for awarding of just interest which go in following terms; “The rate of interest must be just and reasonable depending upon the facts and circumstances of each case and taking all relevant factors including inflation, change of economy, policy being adopted by Reserve Bank of India from time to time, how long the case is pending, permanent injuries suffered by the victim, enormity of suffering loss of future income, loss of enjoyment of life etc. into consideration.” In terms of the ratio laid down in the aforesaid decision and regard being had to the factors mandated to be taken note of while awarding the interest and going through the facts and circumstances existed in this matter, it is just and proper to award simple interest at rate of 9% per annum on the awarded amount from the date of filing of the present claim application till the date of payment of awarded interest.

**(e) Deduction of Tax at source:**

[28] In this regard, the ratio laid down and directions issued by **Division Bench of Hon'ble High Court of Gujarat** in **Hansaguri Prafulchandra Ladhani & Others v. Oriental Insurance Company Ltd & others**, reported in **2007 ACJ 1897**. The said decisions lays down that if the amount calculated on the awarded amount does not exceed Rs. 50,000/- per applicant/claimant per annum, then no TDS is required to be deducted by the insurance company /

opponents at the time of depositing amount along with interest in the Tribunal.

In this background, in this matter, the insurance company is hereby directed to not to deduct the TDS if the amount of interest does not exceed Rs. 50,000/- per annum per applicant.

**[29] Summing-up as regards conclusion on the basis of findings;**

(i) The reasoning in respect of first issue clearly leads towards the fact that the **opponent No. 1** herein, that is, the driver of Ecco car bearing registration No. **GJ-21-CA-9487** and the **applicant** herein riding motorcycle bearing registration No. **GJ-9-DB-5760** have been held to be rash and negligent to the extent of **70% - 30%** respectively while driving their respective vehicles resulting into the vehicular accident wherein the applicant herein has sustained injuries. This requires holding of issue No. 1 partly in the affirmative.

(ii) As regards the issue No. 2 and issue No. 3, the Tribunal has statutorily, logically and rationally analyzed entire evidence available on record and awarded compensation and quantified in all to the victim to the tune of Rs. 7,45,399/-. The bifurcation thereof and awarding them under various heads have been reasoned and specified in the relevant paragraph of the foregoing part of the present judgment.

In this background, the claimant is entitled to the amounts by way of compensation in the ensuing manner;

<b>Amount in Rs.</b>	<b>Head</b>
3,34,648/-	Medical expenses

10,000/-	Special diet expenses
5,000/-	Attendants' charges
2,500/-	Transportation charges
10,000/-	Pain, shock and sufferings
82,668/-	Actual loss of income
6,20,040/-	Loss of amenities
<b>10,64,856/-</b>	<b>Total compensation</b>
<b>3,19,457/-</b>	<b>30% Contributory negligence</b>
<b>7,45,399/-</b>	<b>Total compensation</b>

(iii) As regards the issue No. 3, the Tribunal passes the following final order in the interest of justice:

**ORDER**

- The present claim application stands **partly allowed** against the opponent No. 1, opponent No. 2 and opponent No. 3 herein, that is, driver-cum-owner as per the RC Book, Insurance Policy holder and Insurance Company of Eco car bearing registration No. GJ-21-CA-9487 respectively.
- The opponent No. 1, opponent No. 2 and opponent No. 3 herein are jointly and severally held liable to make loss good to the extent stated in the decision and accordingly, ordered to pay to the tune of **Rs. 7,45,399/- (Rupees seven lakh forty five thousand three hundred and ninety nine only)** to the petitioner by way of compensation together with proportionate costs and interest at the rate of 9% per annum from filing the claim petition to realization of the said amount.
- The opponent No. 1, opponent No. 2 and opponent No. 3 herein are hereby directed to comply with the provisions

of Section 194A of the Income-tax Act and deposit the aforesaid amount of award after deducting the amount of interim compensation, if any, paid under Section 140 of the MV 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, Sabarkantha at Himmatnagar.
Account No.	43163682045
Name of Bank	State Bank of India, Himmatnagar.
Name of Branch	Himmatnagar Branch
IFSC Code	SBIN0000381
Email address	<a href="mailto:nazirmacthmt@gmail.com">nazirmacthmt@gmail.com</a>

- The opponent No. 1, opponent No. 2 and opponent No. 3 herein shall instruct their Banks 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 Reference No./ Unique Transaction Reference (UTR) No.	
Name of Bank	
Name of Insurance Co.	

- On such deposit being made, the opponents shall submit a letter to the office of the Claims Tribunal enclosing a copy of the bank advice in the prescribed format as above at the earliest by email on [nazirmacthmt@gmail.com](mailto:nazirmacthmt@gmail.com) and shall

also send a copy of the aforesaid payment advice to the Claims Tribunal concerned and serve a copy of the same on the applicant or his advocate as the case may be.

- Insofar as tax deduction at source is concerned, Form 16-A of the Income-tax Act should be provided to the applicant on whose behalf the deduction has been made so as to enable him to seek refund of the tax deducted.
- Deficit Court fees, if any, be recovered from the awarded amount.
- On realization of the amount and after above deductions, 30% amount shall be paid by NEFT or RTGS directly in the bank account of the applicant after due verification and the remaining 70% amount shall be deposited in any Nationalized Bank for a period of 5 years in FDR in the name of the applicant with a liberty to get periodical interest against the FDR, but shall not raise any advance/loan without prior permission of this Tribunal.
- Cost shall follow the event.
- Award to be drawn accordingly.

The order is pronounced in the open Tribunal on the 12<sup>th</sup> day of **March, 2026** under my hand and seal.

Date: 12/03/2026  
Place: Himmatnagar

**[Kanubhai R. Rabari]**  
**Chairman**  
**MAC Tribunal (Main)**  
**Sabarkantha at Himmatnagar**  
**UIC No. GJ 00477**

*mbr*