


GJSK010013232022 	Received on :	19 th July 2022		
	Registered on :	19 th July 2022		
	Decided on :	12 th March 2026		
	Duration :	03	07	24
		Years	Months	Days

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

Exhibit _____

MAC PETITION No. 71/2022

Applicant: Rajeshkumar Vinodbhai Makvana,
Age: About 43 years, Occupation: Supervisor at
Shri Mahakali Developers Firm, Resi. Of:
At & Post: Ilol, Taluka: Himmatnagar,
District: Sabarkantha.

V / s

Opponents : (1) Driver-cum-Owner of
Chevrolet Spark Car No. GJ-9-AG-1735:
Mukta, D/o Radhakishan Tandan,
Age: About 45 Years, Occupation: Insurance,
Resi. Of: Baleli Mill, B/h Durga Bazaar,
Himmatnagar, Dist.: Sabarkantha.

(2) Owner of Chevrolet Spark Car No.
GJ-9-AG-1735:
Mayank Radhakishan Tandan,
Age: About 46 Years, Occupation: Business,
Resi. Of: Baleli Mill, B/h Durga Bazaar,
Himmatnagar, Dist.: Sabarkantha.

Present Resi. Of: D-42, Umiyanagar Society,
Berna Road, Mahavirnagar, Himmatnagar,
Dist.: Sabarkantha

- (3) Insurance Company of
Chevrolet Spark Car No. GJ-9-AG-1735:
SBI General Insurance Co. Ltd.,
Jay Shri Ambika Chambers, Second Floor,
Near CU Shah Collage, Navyug Colony,
Ashram Road, Ahmedabad.

Appearance:

Mr. J.V. Vankar, Learned Advocate for the Applicant
Mr. Y.N. Doshi Learned Advocate for the opponent No. 1 and 2
Mr. A.D. Patel, Learned Advocate for the Opponent No. 3

**Claim Petition For Compensation of Rs. 6,00,000/-
Under Section 166 of the Motor Vehicles Act, 1988**

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 injuries being sustained in the vehicular accident to the tune of Rs. 6,00,000/- (Rupees six lakh only). The

narration 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 14th March, 2022, the applicant herein was standing with his motorcycle bearing registration No. GJ-18-AP-4648 beside the road at Panch Batti to return to his office situated at Prabhu Plaza, By-pass road in Himmatnagar after completing his office work. At that time, at about 3:30 p.m., the opponent No. 1 came by driving her Chevrolet Spark car bearing registration No. GJ-9-AG-1735 from Durga Bazaar rashly and negligently and knocked down the motorcycle of the applicant and caused the alleged accident. Consequently, the applicant fell down on the road, sustained fracture injuries in his right leg and other multiple injuries over his person resulting into disabilities which need to be compensated by way of award under various heads and in all to the tune of Rs. 6,00,000/-.

The opponents No. 1 and 2 have denied the allegations leveled in the application by filing their reply vide Exhibit 16.

The opponent No. 3, Insurance Company, has denied the allegations leveled in the application by filing its reply vide Exhibit 20.

[3] Evidence:

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

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

Sr. No.	Name and Nature of the witness	Exhibit
1	Affidavit by claimant Rajeshkumar Vinodbhai Makwana	33

(b) Documentary evidence:

Sr. No.	Particular and Nature of documents	Exhibit
1	Copy of complaint	39
2	Copy of panchnama of place of accident	40
3	Copy of injury certificate	41
4	Copy of RC Book of Chevrolet Spark Car No. GJ-9-AG-1735	42
5	Copy of driving licence of opponent No. 1	43
6	Copy of Insurance Policy of Chevrolet Spark Car No. GJ-9-AG-1735	44
7	Disability certificate of applicant	45
8	Medical bills	46
9	Copy of charge-sheet	47
10	Copy of Aadhar Card of the applicant	48
11	Copy of PAN card of the applicant	49
12	Copy of college leaving or transfer certificate of the applicant	50
13	Copy of driving licence of the applicant	60
14	Copy of Income-tax acknowledgment of the applicant for the Assessment Year 2022-2023	61
15	Closing pursis	62

(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:

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

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

	- Nil -	
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(b) Documentary evidence:

Sr. No.	Particular and Nature of documents	Exhibit
1	Copy of investigation report	35
2	Copy of bank passbook of Shri Mahakali Developers in respect of payment of salary to the applicant herein	36
3	Copy of bank account passbook of the applicant	37

4	Copy of Income-tax acknowledgments of the applicant for the Assessment Year 2018-2019, Assessment Year 2019-2020 and Assessment Year 2020-2021	38
5	Copy of Insurance Policy of Chevrolet Spark Car No. GJ-9-AG-1735	53
6	Closing pursis	54

[4A] Arguments advanced by the applicant:

Learned advocate for the applicant herein would put forward his written argument vide Exhibit 63 mainly stating that on the fateful day, that is, on 14th March, 2022, at about 3:30 p.m., the applicant herein went to Station Road office by riding his motorcycle bearing registration No. GI-18-AP-4648 for office work and after completing the work, for going back to his office, he was standing on the correct side of the road at Panch Batti, that at that time, the opponent No. 1 came by driving her Chevrolet Spark car No. GI-09-AG-1735 in rash and negligent manner from Durga Bazaar side violating the traffic rules and regulations and hit the motorcycle of the applicant, causing an accident in which the applicant suffered a serious fracture in his right leg and serious injuries to his body, therefore, he was immediately taken to the hospital of Dr. Kamlesh Patel, JK Orthopedic Hospital Himmatnagar in a hired vehicle for treatment, where necessary treatment was done by operating his leg by inserting plates and iron rods and was admitted as an inpatient, that the complaint of this incident has been registered at B Division Police Station, Himmatnagar vide First CR No. 289/2022 and looking to the complaint filed in connection with the said accident, the panchnama of the crime scene and the charge-sheet, it evidently clear that the alleged incident was occurred only on account of rash and negligent driving by the opponent

No. 1 herein, that as regards the quantum of compensation, at the time of the accident, the date of birth of the applicant herein is 29th October, 1978 and thus, was aged 43 years at the time of the accident, that the applicant herein was doing service as site supervisor at Shri Mahakali Developers and also used to carry out work as brokerage of land by making available relevant bank passbook entries on the record as well as by making available Income-tax Returns on the record, the applicant has successfully proved his income by making available the copy of Shri Mahakali Developers' bank passbook vide Exhibit 36 showing his salary to the tune of Rs. 15,000/-, that all the aforesaid business and income to the tune of Rs. 3,96,980/- have been proved by the applicant herein by making available all the relevant documents including Income-tax Returns, bank passbook etc., that the said injuries have caused disablement of left lower limb to the extent of 27% and body as a whole disability can be considered to the tune of 9%, that the applicant herein deserves to be awarded the compensation under loss of future prospects as well in addition to other heads and in all applicant may be awarded compensation to the tune of Rs. 8,95,320/- along with interest from the opponents jointly and severally and in support of these arguments, the learned advocate for the applicant herein has relied upon following decision;

- (i) **ICICI Lombard General Insurance Co. Ltd. Vs. Vallabhbhai Nathabhai Bhalani & Ors. R/ First Appeal No. 1710 of 2022, with R/Cross objection No. 219 of 2022 in R/First Appeal No. 1710 of 2022, Honourable High Court of Gujarat.**

[4B] Arguments advanced by the opponents:

Learned advocate for the opponent No. 3 herein would put forward his written argument vide Exhibit 55 mainly stating that

looking to the medico-legal certificate, it is stated that RTA – bike with car, that the applicant herein was riding his motorcycle without possessing a valid and effective driving license, that the occurrence of the accident is attributable to his own negligence and therefore, any claim for damages or compensation should be subject to deduction of contributory negligence attributable to the applicant herein, that looking to the cross-examination recorded vide Exhibit 33, it is evident that the applicant has not approached the Honourable Tribunal with clean hands as he has not made available his bank statement till date, that even the applicant has disclosed business income and interest income in his Income Tax Returns, he does not have knowledge regarding the specific nature or source of the said income, that had the income been genuine and earned as claimed, he would have been in a position to specify the nature or source of the business or source reflected therein, that the applicant has also stated that he maintains accounts with Nagrik Bank, SBI Bank, Bank of India and Union Bank and has expressed willingness to furnish bank statements reflecting transactions up to date, that he has further admitted that deposits continue to be made into these accounts which proves that the applicant has not demonstrated any loss of income attributable to the accident, moreover, that the income reflected in the Income-tax Return from 1st April, 2021 to 31st March 2022, no subsequent returns have been filed to substantiate ongoing income which is more than sufficient to disbelieve the say of the applicant herein that he was earning aforesaid income from aforesaid sources. Consequently, the applicant has failed to substantiate any claim of income or loss arising from the alleged incident and in support of the aforesaid arguments, the learned advocate for the opponent No. 3 herein has relied upon

following decisions;

- (i) **Rajkumar V/s Ajaykumar, 2010(0) AIJEL-SC-49315, Honourable Supreme Court of India.**
 - (ii) **Parsotambhai Valjibhai Nakum V/s Dumber No. GJ-II-U-8569 & Ors., First Appeal No. 3848 of 2008, Honourable High Court of Gujarat.**
 - (iii) **Manilal Savjibhai Changela V/s Mankanbhai Bhimjibhai Patel & Ors., First Appeal No. 3335 of 2008, Honourable High Court of Gujarat.**
 - (iv) **National Insurance Company Ltd. V/s Dineshbhai G. Patel & Ors., First Appeal No. 3329 of 2010, Honourable High Court of Gujarat.**
- [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 processualy 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 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. As per the final order.
 3. As per the 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 fashions;

“(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 applicant, 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 tile 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 vain, 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 bring its with 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 disability (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 33, complaint vide Exhibit 39 and panchnama of the scene of occurrence vide Exhibit 40, it is stated by the applicant herein that on 14th March, 2022, when he was standing with his motorcycle bearing registration No. GJ-18-AP-4648 beside the

road at Panch Batti to return to his office situated at Prabhu Plaza, Bypass road in Himmatnagar after completing his office work, at that time, at about 3:30 p.m., the opponent No. 1 came by driving her Chevrolet Spark car bearing registration No. GJ-9-AG-1735 from Durga Bazaar rashly and negligently and knocked down the motorcycle of the applicant and caused the alleged accident wherein the applicant herein sustained serious injuries.

During the cross-examination of the applicant herein made by the learned advocate for the opponent No. 3 herein, the following facts come to the fore;

- (1) That in his claim petition paragraph No. 11 (a), he has stated his age as 43 years and that by doing service as supervisor, he was earning to the tune of Rs. 18,000/- per month, whereas in his affidavit, he has stated his age 43 years and income to the tune of Rs. 36,000/-;
- (2) That he has got his statement recorded before the investigator of the Insurance Company on 30th September, 2022 wherein he has identified his signature, made available on the record vide Exhibit 35 ;
- (3) That he has not made available any documentary evidence to show that he is not currently employed by Mahakali Developers and the witness voluntarily states that when a private firm dismisses an employee, they do so verbally;
- (4) That the document in the form of bank statement of Bank of Maharashtra is in respect of Shri Mahakali Developers which he has obtained on request. As the said document is made available on the record by the learned advocate for the opponent No. 3 herein and as the applicant herein has admitted the same, therefore, the said document is

given Exhibit 36;

(5) That whatever amount he used to receive from Mahakali Developers, it was being deposited in his State Bank of India bank account;

(6) That the document in the form of bank statement of State Bank of India is in respect of the applicant himself which he has obtained from the bank. As the said document is made available on the record by the learned advocate for the opponent No. 3 herein and as the applicant herein has admitted the same, therefore, the said document is given Exhibit 37;

(7) That he is ready and willing to produce the bank account statement maintained with State Bank of India till date;

(8) That the document in the form of Income-tax Return containing the income from interest and business. As the said document is made available on the record by the learned advocate for the opponent No. 3 herein and as the applicant herein has admitted the same, therefore, the said document is given Exhibit 38;

(9) That he is ready and willing to produce all his bank accounts details of all banks along with their passbooks maintained with respective banks;

(10) That whatever income he gets is deposited in these bank accounts;

(11) That from the road where the accident occurred, the vehicles like Rickshaw and motorcycle were commuting;

(12) That he had sustained fracture in the middle of tibia and except

that, there was no fracture.

[7] The documentary evidence made available on the record of the present petition contains the complaint vide Exhibit 39 which has been lodged by the brother of the applicant herein, who has reiterated the facts of the story of the alleged vehicular accident and stated that the accident had taken place on account of rash and negligent driving of the opponent No. 1 herein, that is, the driver of Chevrolet Spark car bearing registration No. GJ-9-AJ-1735.

[8] The panchnama of the scene of occurrence has been made available on the record vide Exhibit 40. The topography emerging from this panchnama suggests that the place of occurrence of incident is situated on the southern side of the road leading from Durga Bazaar Panch Batti towards old Civil Hospital near Subhashchandra statue, the road was 12 feet wide, that no marks were found on the road on account of passing of other vehicles therefrom, that from the place of occurrence, the east – west road was leading from Durga Bazaar – Panch Batti to Civil Hospital, at the northern side, the Subhashchandra statue was there and the road leading to tower was situated and Umiya Sales Corporation, Pari Agro etc. shops were situated, at the southern side, the road was leading towards Mahajan Market – bus stand. After carrying out the investigation, the police has laid charge-sheet against the opponent No. 1 herein vide Exhibit 47.

[9] As regards the negligence, first of all, the accident in question has taken place on the southern side edge of the road which corroborates the evidence of the present applicant as he had to cross the road. The area where the accident in question has taken place is a major junction where every type of vehicles pass through from all directions.

Therefore, as the opponent No. 1 was driving the car or such a big vehicle through such a busy market area, she ought to have driven her car with slow speed which she did not and dashed with the motorcycle of the applicant herein who was on the southern side edge of the road.

[10] At the same time, the applicant was returning his office and therefore, as he was required to cross the road and the place of occurrence being commercial activities, he ought to have been extra careful, but he did not and the car dashed with his motorcycle and considering this circumstance, the applicant herein is held to be contributory negligent for occurrence of the accident in question, to the extent of 10%.

[11] Thus, regard being had to the manner, method, happening of the accident and the aforesaid circumstance, the way in which the accident occurred, the opponent No. 1, driver of Chevrolet Spark car bearing registration No. GJ-9-AG-1735 is held to be rash and negligent for causing the vehicular accident to the extent of 90% whereas the applicant is held to be contributory negligent to the extent of 10%. In this background, the issue No. 1 is held in the affirmative.

Issue No. 2:

[12] 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 inability to perform all the duties and bodily functions that he could perform before the accident, though he may be 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 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 per cent. 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;
 - (i) Damages for pain, suffering and trauma as a consequences of injury;
 - (ii) Loss of amenities (and/or loss of prospects of marriage) and
 - (iii) 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:

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 33 wherein general statements in respect of this head go in following manner;

That the applicant has, as a result of present vehicular accident, sustained injuries including fracture on right side displaced tibia shaft. To get treatment, the applicant was admitted in JK Orthopedic Hospital, Himmatnagar where he was treated as indoor patient, operation was carried out and implants were fixed. On getting discharged from the hospital, the applicant was required to frequently visit the said hospital 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 and receipts in respect of his treatment are made available in the evidence vide Exhibit 46 and sum total of the various expenditure narrated in the said bill runs into Rs. 1,13,311/- vide bills and receipts made available on record as aforesaid. The learned advocate for the other side has made endorsement that there is no objection if the said bills are considered to the tune of Rs. 91,000/- to Rs. 95,000/-. 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. 0,93,000/-	Medical expenses
Rs. 0,03,000/-	Special diet
Rs. 0,03,000/-	Attendants' charges
<u>Rs. 0,03,000/-</u>	Transportation charges etc.
<u>Rs. 1,02,000/-</u>	Total compensation under this head

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

[13] 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 including fracture on right side displaced tibia shaft. To get treatment, the applicant was admitted in JK Orthopedic Hospital, Himmatnagar where he was treated as indoor patient, operation was carried out and implants were fixed. On account of the vehicular injuries, he had pain in right leg and ankle joint, restriction of movements of joints, difficulty in sitting cross-legged, to squat and performing heavy work. This situation including injuries and fracture 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. 5,000/-.

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

[14] In this regard, the claimant herein has deposed in his deposition that he was bedridden for total six months. No medical evidence or any other evidence indicating rest of such a period has been led on the record, but it appears on the basis of injury in respect of sustaining injuries including fracture that he could not have attended his work for

about three months.

As regards the income of the applicant, the applicant herein has pleaded his income to the tune of Rs. 18,000/- by doing service as site supervisor in Mahakali Developers, whereas in his affidavit on oath vide Exhibit 33, the applicant herein has stated that apart from his aforesaid service, he was also doing brokerage of houses and plots and by doing all these pursuits, he was earning in all to the tune of Rs. 36,000/- per month. This statement made by the applicant herein is contrary to his pleading qua income, because it is difficult to ascertain the sources and income therefrom. This makes even difficult for the present Tribunal to believe the income of the applicant herein to the tune of Rs. 18,000/- as pleaded by the applicant. Therefore, it clearly reveals from the record of the present petition that the applicant herein, just with an intention to inflate his income so as to reach the figure of annual income as per the Income-tax Returns, has made available his aforesaid Income-tax Returns on the record. Moreover, the applicant herein could have pleaded his income as per the figure declared in his Income-tax Returns. More so, the applicant herein does not know that from which source, the income shown in the Income-tax Returns is. The applicant herein has not even made available his bank statement to prove his aforesaid income. Moreover, the document in the form of investigator's report has been made available vide Exhibit 35 which is the statement recorded before the investigator of the opponent Insurance Company. The statement Exhibit 35 categorically contains that the income of the applicant herein was to the tune of Rs. 18,000/- including Rs. 3,000/- towards traveling allowance. There is no any other discussion in the said report

in respect of income of the applicant herein from any other sources. Lastly, as regards the salary income of the present applicant to the tune of Rs. 18,000/-, the copy of his bank statement in respect of account maintained with State Bank of India, Himmatnagar Branch is there on the record vide Exhibit 37. On perusal thereof, it reveals that on 4th January, 2022, Rs. 15,000/- and on 5th March, 2022, Rs. 15,000/- has been credited, but it does not show as to who has or from which source the same has been credited. Moreover, the applicant herein has not proved the aforesaid figure of Rs. 15,000/- by examining any witness from his employer. Furthermore, the so called salary has not been credited in the month of February, 2022. It has been stated by the applicant herein that he has received this money by way of cash, but no believable oral or documentary evidence has been made available on the record in regard thereto.

[15] It is very strange that there is no averment or pleading as regards his business income, other way round, the pleading as regards the business income is not at all there. For the first time, the applicant herein comes forward with a so called evidence of his business in the fag end of the trial. The Tribunal cannot at this stage ignore the basic principle of the pleading and proof which is very vital for any trial and for that matter inquiry. The Tribunal is conscious of the fact that this is not trial but simply it is an inquiry requiring no strict standards of pleading and proof requires to be there. The present inquiry operates on the principle of just, equity and good conscience. All these principles have had bare minimum expectation from the claimant that he must have come with a clean hand as regards his income and that too in the

pleadings. This is the fit inquiry where the Tribunal cannot ignore the basic principle that no amount of evidence can take the place of pleading. In other words, the any amount of evidence is useless in the absence of pleading in the petition. There are catena of judgments enunciating and fortifying this principle. This principle clearly propounds that in the absence of pleading, no value of any sort of evidence at all and Tribunal or Court is bound to ignore such evidence san pleading. Applying this principle to the facts of the present proceeding, the claim as regards the business income cannot sustain at all as there is not a whisper in the pleading about such business income. On the contrary, the claimant herein has all throughout emphasized that he has been rendering his service as a supervisor in some private entity. Even here too, much is desired to be left out as he has not come out with any sort of evidence in respect of his salary at all. Fortification in respect of proof sans pleading has had no value comes to the fore and in the absence of pleading, evidence, if any, produced by the parties cannot be considered from the following decisions of Honourable Apex Court as well as Privy Council;

- (i) Abubakar V/s Harun (1995) 5 SCC 612**
- (ii) Siddique Mohmad V/s Mt. Saran, AIR 1930 PC 57**
- (iii) C.S. Natraj V/s C.S. Subbarayya, AIR 1949 PC 43**
- (iv) Ram Swarup V/s Bishun Narain Inter College, (1987) 2 SCC 555.**

Thus, the applicant herein has not proved his income on the record, consequently, notional income at the time of accident which took place in the year 2022 could be taken as Rs. 8,500/- and

accordingly, the loss under this title can be assessed to.

Considering the injuries and attending circumstances emerging from the record, it comes to the fore that the claimant herein seems to have suffered the loss of earning during the period of treatment to the tune of Rs. 25,500/- considering the recovery period and as the nature of injuries has been described in the medical certificates. Consequently, under the present head, the applicant herein is entitled to receive the compensation to the tune of Rs. 25,500/-.

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

[16] This drives the Tribunal to have regard to the medico-legal certificate that has been received in evidence vide Exhibit 41. The said certificate describes the injuries that the applicant on account of vehicular accident had sustained injuries including right side displaced tibia shaft fracture.

[17] The applicant herein was admitted immediately after the accident to JK Orthopedic Hospital, Himmatnagar where he was imparted treatment as indoor patient from 14th March, 2022 to 16th March, 2022. On account of the injuries, as stated hereinabove, the applicant had sustained injuries like he had complaints of pain in right leg and ankle, restriction of movements of joints, difficulty into sit cross-legged, to squat and performing heavy work.

[18] Regard being had to the injuries narrated in the foregoing part of the present judgment and the permanent partial disability to the tune of 9% body as a whole as discussed above, 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.

[19] Cumulatively analyzing aforesaid factors vis-a-vis the examination in chief, injuries emerging from the evidence and oral evidence of the applicant, it is revealed that on account of the aforesaid injuries in vehicular accident, the applicant herein was not in a position to do the work in the same manner as prior to the accident. This fact, on its being tested on the touchstone of the cross-examination, the said facts are not categorically set at naught nor is the existence of said facts put in the position that it cannot be believed on the basis of preponderance of probabilities. Furthermore, the disability certificate assessing the partial permanent disability of body as a whole to the extent of 9%, of course, the doctor has not been examined as witness, but looking to the injuries, 9% partial permanent disabilities for body as a whole would be considered.

[20] For income, the applicant herein has neither made available any document about his service as a site supervisor in Shri Mahakali Developers nor has he examined any witness. In the result, it is very

difficult to come to conclusion that the applicant herein was earning the income to the tune of Rs. 18,000/- per month. The oral evidence of the applicant herein leads nowhere in the march of determining the present case. Glaring circumstance is that the applicant herein mentioned income to be to the tune of Rs. 18,000/- per month, but not an iota of evidence barring oral words of the said witness about the monthly income. Overall analysis of the evidence of the present applicant is not at all palatable one and does not inspire confidence of the present Tribunal.

[21] Practical and pragmatic approach would definitely reveal that the exact, net or gross income of the applicant cannot be determined and fixed. This leaves the Tribunal with only option of adopting the notional income as there is no evidence as regards his income. This conclusion needs to be assessed from the arguments advanced by the learned advocate for the applicant herein. Thus, considering the aforesaid aspects and the year of the accident, the notional income should be assessed to the tune of Rs. 8,500/- per month and in the background of the prevalent financial atmosphere in the year 2022, the same can be pegged at Rs. 8,500/- per month.

[22] Coming to the age of the applicant herein, it is deposed in the deposition that his age at the relevant point of time was of 43 years. To prove his age, the applicant herein has made available his college leaving certificate vide Exhibit 50 showing his date of birth 29th October, 1978. The accident has occurred on 14th March, 2022 and therefore, it can be concluded that the applicant herein was aged 43 years 4 months 17 days old at the time of the accident, meaning thereby, in the age group of 41 to 45 years. This conclusion is irresistible in the factual background of the present proceeding.

[23] Regard being had to the said age of the applicant herein, the multiplier that may be applied to the facts of the present proceeding can be selected on the basis of the table which is set out in Sarla Varma's case by Honourable Apex Court considering the earlier decisions. Therefore, as per the said table, for the age group of 41 to 45 years, the multiplier that has been settled is 14.

The calculation of the future loss, thus, depends upon the three factors viz. the income, percentage of disability resulting into percentage of loss of or reduction of income on account of disability and multiplier which is applicable to the particular case. So far as the income is concerned, the notional income to the tune of Rs. 8,500/- having been obtained, the percentage of disability is available to the extent of 9% body as a whole agreed upon and multiplier of 14. This requires search of only material in the form of loss of earning capacity. In respect of this aspect, the applicant makes statement in his examination-in-chief on affidavit that on account of said injuries, he is not able to put in work as he used to do before the accident. Consequently, the earning loss can be put at par with the percentage of disability.

Loss in future earning capacity is equal to income multiplied by disability and divided by hundred that would bring us one month loss of income. To reach yearly loss of income, it needs to be multiplied by 12 months. This will make available yearly loss of income. Once yearly loss of income has been there on the record requires searching of multiplier which can make us available the future loss of income for life. The multiplier in the present proceeding has been availed by following the table of multiplier set out by Honourable Apex Court in

Sarla Varma's case. This multiplier is 14 in the present proceeding considering the age of the applicant.

Application of this formula, thus, would bring us to future earning loss of income to the tune of Rs. 1,28,520/- [Rs. 8,500/- monthly income x 9% disablement = Rs. 765/- loss of income per month x 12 months = Rs. 9,180/- loss of income per annum x 14 multiplier].

(v) Liability of payment of compensation:

[24] 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 redress-able by an action for compensatory, unliquidated damages.

[25] 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 driver in this proceedings. Consequently, the opponent No. 1 herein is liable.

[26] As regards the liability of the opponent No. 2 is concerned, it is

arising from the principle of vicarious liability, the meaning thereof having been expressed in Black's Law Dictionary "the state of being bound or obliged in law or justice to do, pay or make good something, a legal responsibility".

Similarly, the Oxford English Dictionary defines the said terms saying "the condition of being liable or answerable by law or equity."

Simply putting liability that a supervisory party (such as an employer or owner in this case the opponent being the owner bears for his actionable conduct. The responsibility or liability of making good by way of compensation for the tort which is being committed to the applicant herein equally lies in the opponent No. 2 owner herein being the owner of the offending vehicle.

[27] So far as the liability of the opponent No. 3 Insurance Company is concerned, it is nothing but contractual liability that is emerging from the contract of indemnity which means that a contract by which one party promises to save the other from loss caused to him by the contract of the promiser himself or by the conduct of any other person is called a contract of indemnity. The contract of insurance is in the nature of contract of indemnity to effectuate a contract of indemnity, a decree has to be first obtained against the insured and thereupon the liability of the insurer to discharge the decree arises. A contract of insurance is a contract by which the insurer promises to save the insured from the loss caused to him by contract of any other person. Under Section 125 of the Indian Contract Act, 1872, the promise, acting within the scope of his authority, is entitled to recover from the promiser or damages which he may be compelled to pay in any suit in respect of any matter to be the promise to indemnify applies. It is this

principle which is incorporated in the provisions of Motor Vehicle Act, 1988 and more particularly the ensuing provisions in the Section 147 mandates getting policy of insurance;

(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which-

(a) is issued by a person who is an authorized insurer; and

(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)

(i) against any liability which may be incurred by him in respect of the death of or bodily a [injury to any person, including owner of the goods or his authorized representative carried in the vehicle] or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place :

Provided that a policy shall not be required

(1) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 in respect of the death of, or bodily injury to, any such employee-

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle engaged as a conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods carriage, being carried in the vehicle, or (ii) to cover any contractual liability.

Explanation.-For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.

(2) Subject to the proviso to sub-section (1), a policy of insurance referred to in sub-section (1) shall cover any liability incurred in respect of any accident, up to the following limits, namely :-

(a) save as provided in clause (b) the amount of liability incurred;

(b) in respect of damage to any property of a third party, a limit of rupees six thousand :

Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier.

(3) A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favour of the person by whom the policy is effected a certificate of insurance in the prescribed form and containing the prescribed particulars of any condition subject to which the policy is issued and of any other prescribed manner; and different forms, particulars and matters may be prescribed in different cases.

(4) Where a cover note issued by the insurer under the provisions of this Chapter or the rules made thereunder is not followed by a policy of insurance within the prescribed time, the insurer shall, within seven days of the expiry of the period of the validity of the cover note, notify the fact to the registering authority in whose records the vehicle to which the cover note relates has been registered or to such other authority as the State Government may prescribe.

(5) Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons.

[28] 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 44 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.

In summing-up the present title, it can safely be concluded that the opponent No. 3, Insurance Company herein, is liable to make good the damages having been caused to the victim herein by way of rash and negligent driving.

(E) Awarding of interest:

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.

(F) Deduction of Tax at source:

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 lead towards the fact that the opponent No. 1 herein and the applicant herein have driven their respective vehicles with negligence to the extent of 90% and 10% resulting into the vehicular accident that has caused the injuries to the victim herein. This requires holding of issue No. 1 partly in the affirmative.

(ii) As regards the issue No. 2, 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 total Rs. 2,34,918/-. The bifurcation thereof and awarding them on 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:

Amount in Rs.	Head
93,000/-	Medical expenses
3,000/-	Special diet expenses
3,000/-	Attendants' charges
3,000/-	Transportation charges
5,000/-	Pain, shock and sufferings
25,500/-	Actual loss of income
1,28,520/-	Loss of amenities
2,61,020/-	Total compensation
26,102/-	- 10% Contributory negligence
2,34,918/-	Total compensation

(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**.
- The opponent No. 1, opponent No. 2 and opponent No. 3 herein, that is, driver, owner and Insurance Company of Chevrolet Spark Car bearing registration No. GJ-9-AG-1735 respectively, 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. 2,34,918/- (Rupees two lakh thirty four thousand nine hundred and eighteen 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 to 3 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 Himatnagar.
Account No.	43163682045
Name of Bank	State Bank of India, Himmatnagar.
Name of Branch	Himmatnagar Branch

IFSC Code	SBIN0000381
Email address	nazirmacthmt@gmail.com
Account Name	Motor Accident Claims Tribunal, Sabarkantha at Himatnagar.

- The opponent No. 1 to 3 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 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.

Pronounced in the open court on this 12th 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

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