GJSR010014412018

Received on : 20.02.2018
Registered on : 20.02.2018
Decided on : 28.07.2026
Duration : YY. MM. DD.

IN THE MOTOR ACCIDENT CLAIMS TRIBUNAL [MAIN], SURAT.

M.A.C.P. No. 52/2018

Exh. ______

1) **GEETA Wd/o PUNA CHOSLA,**
Aged about : 25 years, Occ. : House-hold,
Residing at : Malpara, Tal. Vallabhipur,
Dist. Bhavnagar.

2) **MINOR KISHAN S/O PUNA CHOSLA,**
[Through his guardian applicant no. 1]
Aged about : 4 years, Occ. : Study,
Residing at : As above.

3) **MINOR VISHAL S/O PUNA CHOSLA,**
[Through his guardian applicant no. 1]
Aged about : 3 years, Occ. : Study,
Residing at : As above.

4) **LAXMAN HARIBHAI CHOSLA,**
Aged about : 45 years, Occ. : Agriculture,
Residing at : As above.

5) **AVALBEN LAXMANBHAI CHOSLA,**
Aged about: 44 years, Occ. : House-hold,
Residing at : As above.

....PETITIONERS

VERSUS

1) RAMESH SUKHDEV MORE,
Aged about : 44 years, Occ. : Driving,
Address : Madina Mohalla, Shirpur,
Tal. Shirpur, Dist. Dhule, Maharashtra.

2) ANILBHAI CHUNILAL PARMAR,
Aged about : 35 years, Occ. : Transport,
Address : Shrethli, Borad, Dist. Botad.

3) THE NEW INDIA ASSURANCE CO. LTD.,
Add. Tirupati Plaza, Opp. Family Court, Nanpura,
Surat.

4) PATHAN SIKANDAR KALUBHAI,
[Impleaded Vide Order Passed Below Exh. 48]
Add. Vaghrivas, Tal. Gariyadhar,
Dist. Bhavnagar.

….OPPONENTS

APPEARANCE:-

Shri N. M. Shah,	Ld. Advocate for the Petitioners,
Shri S. K. Desai,	Ld. Advocate for Opponent No. 3

SUB : CLAIM PETITION U/S. 166 OF THE M. V. ACT.

:: <u>J U D G M E N T</u> ::

[1] The petitioners have preferred the present claim petition under Section 166 of Motor Vehicles Act for compensation of Rs. 10,00,000/- along with interest @ 12% for the losses suffered by the petitioners due to the demise of deceased Punabhai Laxmanbhai Chosla in a vehicular accident dated 22.07.2017 involving a tempo bearing No. **GJ-03-AT-0731.**

[2] It is pertinent to note that opponent No. 4- Pathan Sikandar Kalubhai has been impleaded as a party in the capacity of the owner of the offending vehicle vide Order passed below Exh. 48. As the notice issued to Opponent No. 4 could not be served through ordinary mode, service was effected by way of a public notice published in a newspaper by applicants, a copy of which is produced at Mark 51/1.

[3] Ld. Advocate Shri N. M. Shah is present for applicants. Ld. Advocate Shri S. K. Desai is present for opponent No. 3- Insurance Company. Heard the Ld. Advocates appearing for the parties and perused the record.

::***FACTUAL MATRIX***::

[4] It is contended by the petitioners that on 22.07.2017 at about 06:30 p.m., the deceased, Punabhai Chosla, was travelling in an Eicher Tempo bearing Registration No. GJ-03-AT-0731 in the course of his employment as a cleaner. It is further contended that the tempo was being driven by opponent No. 1 in a very rash, negligent and in a manner endangering human life. When the said tempo reached within the limits of Nandav Village, Nr. the Old Green Hotal, on N.H. No. 8 (from Ahmedabad to Mumbai), opponent No. 1 lost control over the steering and dashed the tempo into the rear of a tanker traveling ahead. As a result of the collision, the deceased sustained grievous injuries and succumbed to those injuries during medical treatment.

[4.1] It is the case of the applicants that the accident in question has occurred due to rash and negligent driving of opponent No. 1 for which offence is registered against him with Kosamba Police Station, Surat, vide I C.R. No. 128/2017.

[4.2] It is the case of the applicants that at the time of accident the deceased was a strong, healthy and disease free young man. It is the case of the applicants that the deceased was earning Rs. 5,000/- per month as a cleaner, in addition, whenever receiving Rs. 100/- per day as outstation allowance. Apart from his employment, he was also supervising his father's agricultural activities and daily farming, from which he was earning approximately Rs. 6,000/- per month.

[4.3] It is the case of the applicants that due to the grievous injuries sustained in the accident, the deceased was immediately admitted as an indoor patient at Jayaben Modi Hospital, Ankleshwar, where necessary treatment was provided. However, the injuries were so severe that he died during treatment shortly. It is the case of the applicants that medical expenses exceeding approximately Rs. 1,50,000/- were incurred for the treatment of deceased. It is the case of applicants that applicants have suffered tremendous trauma as applicants have lost their beloved one at an age when they would have liked the deceased to be with them for most of the time. Thus, for the losses suffered, which include both pecuniary and non pecuniary losses, the applicants have been constrained to file present petition.

[5] The notice issued by the Tribunal has been duly served upon the Opponents. Opponent Nos. 1, 2 and 4 have neither appeared nor have filed any reply contesting the petition. Opponent No. 3 Insurance company has filed the written statement at Exh. 23. All the allegations and averments contained, *interalia*, the petition have been denied by the

Opponent- Insurance Company. The factum of accident as narrated, *interalia,* the petition has been denied by the Opponent- Insurance company. The details of the age, income and occupation of the deceased have been denied in toto by the Opponent- Insurance Company. It is contended that at the time of accident the opponent No. 1 was not holding the valid and effective driving license to drive the vehicle involved in the accident, and hence, opponent - Insurance Company is not liable to compensate the applicants.

[5.1] It is mainly contended that the insurance company is not liable to indemnify or pay compensation, as the deceased was allegedly traveling as an unauthorized passenger in the insured goods vehicle, which is not covered under the insurance policy. It is further submitted on relying on the police papers that the deceased was neither the driver nor the cleaner of the vehicle, and therefore there was a breach of the policy conditions and since no additional premium had been paid to cover such risk, the insurance company is not liable to pay any compensation. It is further submitted that as per the R.T.O certificate and permits records, the permit of the said tempo was not valid and was not in force on the date of the accident. Therefore also, it is submitted that the insured vehicle was being operated in violation of statutory provisions and the terms & conditions of the insurance policy. Hence, the insurance company is not liable to pay any compensation.

[6] Considering the pleadings of the parties, the Tribunal has framed the Issues vide **Exh. 28**. The Issues read as under:

1. Whether the applicant proves that the deceased died due to rash and/or negligent driving of the driver(s) of the vehicle(s) involved in the accident, as alleged ?
2. Whether the applicant/ applicants is/are entitled to get compensation ? If yes, what amount and from whom ?
3. What order and award ?

[7] My findings to the above Issues are as under:

1. In Affirmative.
2. In Affirmative and as per the final Order.
3. As per the final Order.

:: REASONS ::

ISSUE NO. 1:-

[ISSUE OF NEGLIGENCE]:-

[8] The applicant No. 1 has filed her examination in chief affidavit under Order 18 Rule 4 of the C.P.C. at Exh. 31, wherein, it is stated that on 22.07.2017 at about 06:30 p.m., the deceased, Punabhai Chosla, was traveling in an Eicher Tempo bearing Registration No. GJ-03-AT-0731 in the course of his employment as a cleaner. It is further contended that the tempo was being driven by opponent No. 1 in a very rash, negligent and in a manner endangering human life. When the said tempo reached within the limits of Nandav Village, Nr. the Old Green Hotal, on N.H. No. 8 (from Ahmedabad to Mumbai), opponent No. 1 lost control over the steering and dashed the tempo into the rear of a tanker traveling ahead. As a result of the collision, the deceased sustained grievous injuries and succumbed to those injuries during medical treatment. It is further stated that the accident in question has occurred due to rash and negligent driving of opponent No. 1 for which offence is registered against him with Kosamba Police Station, Surat, vide I C.R. No. 128/2017.

[9] In addition to the oral evidence of applicant No. 1 at Exh. 31, the applicants have produced at Exh. 33 the copy of Complaint, which is filed against the driver of the tempo bearing Registration No. GJ-03-AT-0731. The applicants have also produced the copy of panchnama of place of accident at Exh. 34.

The contents of the said document corroborate with the averments of petition and the statements made in the affidavit. The applicants have adduced sufficient evidence in support of their version. On the other hand, nothing has come on record on the part of the opponents, which can be considered as rebuttal to the evidence adduced by the applicant. Considering the said aspect and in view of the Judgment of Hon'ble High Court of Gujarat in case of ***Bhikhup v. Lilaben Laljibhai Vala*** reported in ***2001 TAC Part I Page 27,*** the adverse inference has to be drawn against the opponent No. 1.

Considering the oral evidence as well as documentary evidence adduced by the applicant, it is clear that opponent No. 1 had been rash and negligent at the time of accident. In the said set of circumstances, on the basis of the ocular as well as the documentary evidence adduced on record, it is held that the accident in question has occurred due to rash and negligent driving of opponent No. 1.

[10] Though the contention has been raised on the part of the opponent No. 3- insurance company that accident was not occurred due to the negligence of opponent No. 1, however as stated above, no evidence is adduced in support of the said contention by the insurance company. Per contra, the positive evidence has come on record by the applicants, establishing the negligence of opponent No. 1. At this stage, it will be beneficial to refer the Judgment in case of **New India Assurance Co. Ltd. vs. Neelam Singh** reported in **2013(0) AIJEL-DL 1367156**, wherein it is held that admittedly, the evidence under the Motor Vehicles Act, 1998 being a welfare legislation, is not required to be proved like civil and criminal cases beyond reasonable doubt.

[11] Further, in case of ***N. K. V. Bros (P) Ltd. vs. M. Karumai Ammal And Ors*** reported in ***1980(3) SCC 457*** it is held that:

> *"3. Road accidents are one of the top killers in our country, specially when truck and bus drivers operate nocturnally. This proverbial recklessness often persuades the courts, as has been observed by us earlier in other cases, to draw an initial presumption in several cases based on the doctrine of res ipsa loquitur. Accidents Tribunals must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here or some obscurity there. Save in plain cases, culpability must be inferred from the circumstances where it is fairly reasonable. The court should not succumb to niceties, technicalities and mystic maybes....."*

[12] In addition to the above, the applicants have produced Inquest Panchanam and Postmortem Report at 35 & 36 respectively, wherein the cause of death is mentioned as '*Hemorrhagic shock due to injury to live & lung*'.

[13] Considering above, it is proved that the accident in question has occurred due to rash and negligent driving of opponent No. 1 due to which deceased lost his life and hence, I decide Issue No. 1 in affirmative.

ISSUE NO. 2:-

[QUANTUM OF COMPENSATION]:

[14] The cardinal principal for awarding compensation in the accident cases, is that the compensation to be awarded must not be inadequate nor must be exorbitant but the same must be JUST COMPENSATION and the Hon'ble Apex Court has, in case of ***Sarla Verma vs. Delhi Transport Corpn., reported in 2009 ACJ 1258*** provided guidelines for awarding JUST COMPENSATION to the victims and the case of ***National Insurance Co. Ltd. vs. Pranay Sethi and Others reported in 2017 16 SCC 680*** and accordingly, in the present case JUST COMPENSATION is worked out as under.

[I] CLAIM FOR FUTURE LOSS OF INCOME - LOSS OF DEPENDENCY :-

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

- **<u>AGE</u>:**

[16] At Exh. 37, the birth certificate of the deceased issued by the school is produced as well as at Exh. 38, the copy of Election Card of the deceased is produced, which reflect the date of the birth of the deceased as 06.07.1990. The accident was occurred on 22.07.2017, which reveals that at the time of the accident the age of the deceased was **27 years old**.

- **<u>INCOME</u>**:

[17] It is contended by the applicant in her examination - in -chief affidavit at Exh. 31 that the deceased was employed as a cleaner on the offending tempo and was earning a monthly salary of Rs. 7,000/- plus outstation allowances. It is further contended that the deceased was also supervising his father’s agricultural land and was engaged in animal husbandry. Thus, it is stated that from all these sources, the deceased was earning a monthly income of Rs. 10,000/-. However, no evidence in form of documentary or oral has been produced on record by the applicants to substantiate the said claim.

[18] At this juncture, it will be apt to refer the Judgment in case of ***Divisional Controller, KSRTC v. Mahadeva***

Shetty and Another, reported in ***(2003) 7 SCC 197***, wherein the Hon'ble Apex Court has observed in para - 15 as under:

> *"15. It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. Bodily injury is nothing but a deprivation which entitles the claimant to damages. The quantum of damages fixed should be in accordance with the injury. An injury may bring about many consequences like loss of earning capacity, loss of mental pleasure and many such consequential losses. A person becomes entitled to damages for mental and physical loss, his or her life may have been shortened or that he or she cannot enjoy life, which has been curtailed because of physical handicap. The normal expectation of life is impaired. But at the same time it has to be borne in mind that the compensation is not expected to be a windfall for the victim. Statutory provisions clearly indicate that the compensation must be "just" and it cannot be a bonanza; not a source of profit but the same should not be a pittance. The courts and tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be "just" compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of "just" compensation which is the pivotal consideration. Though by use of the expression "which appears to it to be just", a wide discretion is vested in the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness.."*

[19] Further in the case of ***R. D. Hattangadi Vs. Pest Control (India) (P) Ltd.*** reported in ***1995 1 SCC 551***, the Hon'ble Apex Court has laid down as under:

> *"12. In its very nature whenever a tribunal or a court is required to fix the amount of compensation in cases of*

accident, it involves some guesswork, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. But all the aforesaid elements have to be viewed with objective standards."

[20] Further, In the case of, ***Sidram Versus Divisional Manager, United India Insurance Co. Ltd.*** reported in ***2023 (3) SCC 439***, it is held that:

> *"75. In Vijaykumar Babulal Modi (supra), the Gujarat High Court had held:*
>
> *x x x x*
>
> *11. In the case Ward v. James, 1965 (1) All ER 563 , it was said:*
>
> *x x x x*
>
> *In its very nature whenever a Tribunal or a Court is required to fix the amount of compensation in cases of accident, it involves some guess work, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. But all the aforesaid elements have to be viewed with objective standards."*

[21] Considering the ratio laid down in above referred Judgments and also considering the age, able body concept and the fact that the accident in question has occurred in the year of 2017 and the rate of minimum wages prevailing at the relevant time, it would be just and proper to assess the monthly income of the deceased as Rs. 8000/- per month and accordingly, the annual income of the deceased comes to **Rs. 96,000/- p.a..**

[22] Further, as per the ruling of the Hon'ble Supreme Court in the case of ***National Insurance Co. Ltd. vs. Pranay Sethi and Others*** reported in ***2017(16) SCC 680***, considering the age of the deceased i.e. **27 years** and the status of the deceased, it would be just to increase the income of the deceased upto **40%** for prospective rise (i.e. Rs. 38,400/-) and accordingly, the annual income to be considered for the deceased comes to **Rs. 1,34,400/-** (Rs. 96,000/- + Rs. 38,400/-).

- **DEPENDENTS - PERSONAL EXPENDITURE DEDUCTION OF DECEASED:**

[23] Moreover, for arriving at the JUST COMPENSATION in terms of future loss of income, it is necessary to reduce the yearly income of the deceased by adjusting to the proportion of the income that would be used by the deceased, had he been alive and for deciding the said proportion, the guidelines have been issued in the decision of the Hon'ble Supreme Court in the case of ***Sarla Verma vs. Delhi Transport Corpn. (supra)***. According to which, the proportion for personal expenditure deductions have to be made by considering the number of dependents. In the present petition, the deceased was married and applicants are dependents, hence **1/4 proportion** of the income of the deceased has to be deducted from the yearly income of deceased determined and by doing so, the 1/4 portion of income i.e. Rs. **33,600**/- (1/4 of Rs. 1,34,400/-) has to be deducted towards the personal expenditure of the deceased that would have been incurred by the deceased, had he been alive and accordingly, the annual income in question comes to **Rs. 1,00,800/-** (Rs. 1,34,400/- - Rs. 33,600/-)**.**

[24] Further, as the deceased was **27 years** old at the time of the accident, **Multiplier of 17** would be applicable. Hence, the claimants will be entitled to **Rs. 17,13,600/-** (Rs. **1,00,800**/- **x 17** multiplier) as **Loss of Dependency.**

[II] <u>MEDICAL EXPENDITURE</u> :-

[25] It is stated by the applicants that due to the grievous injuries sustained in the accident, the deceased was immediately admitted as an indoor patient at Jayaben Modi Hospital, Ankleshwar, where necessary treatment was provided. However, the injuries were so severe that he died during treatment shortly. It is also stated that medical expenses exceeding approximately Rs. 1,50,000/- were incurred for the treatment of deceased. The applicants have produced medical bills of total Rs. 49,319/- at Exh. 41. The said medical bills are not much disputed by the other side. Hence, considering the expenditure incurred by the applicants in medical treatment of the deceased, it will be just to award **Rs. 49,319/-** to the applicants for **Actual Medical Expenditure.**

[III] <u>CLAIM FOR FUNERAL CHARGES</u>:-

[26] Phrase Funeral Expenses includes fee paid in crematorium, fee paid for space in cemetery and expenses on several religious practices and conventions pursuant to death and considering the decision of Hon'ble Apex court in the case of National Insurance company Ltd. vs. Pranay Shethi (supra), the applicant is entitled for the amount under the head of Funeral and Ritual expenditure.

[27] It is worthwhile to note that the Hon'ble Apex Court in the case of ***National Insurance Company Ltd. vs. Pranay Shethi (supra)***, has observed in regard to enhancement of conventional heads, namely, loss of estate, loss of consortium and funeral expenses that:

> *"61. In view of the aforesaid analysis, we proceed to record our conclusions:-*
> *xxxxx*
> *(viii) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively.* ***The aforesaid***

> ***amounts should be enhanced at the rate of 10% in every three years."***

[28] The Judgment in the case of National Insurance Company Ltd. vs. Pranay Shethi (supra), was passed on 31st October, 2017 and therefore, the amount of the conventional heads are required to be enhanced by 10% at every three years. In that regard, it will be profitable to refer the Judgment in case of ***Lalabhai Chelabhai Chauhan vs. Virendrasinh Kundansinh Jadav & Ors.*** decided by the Hon'ble High Court of Gujarat in ***First Appeal No. 2886/2025***, wherein it is held that:

> *"9) Further, the learned Tribunal while relying on the judgment of Pranay Sethi (supra) has awarded total Rs.50,000/- under the three conventional heads, however, this Court is of the view that amount is required to be reassessed as Rs. 18,150/- towards loss of estate, Rs.18,150/- towards funeral expenses and Rs. 48,400/- towards loss of consortium. Therefore, the amount under the three conventional heads is reassessed as Rs.84,700/-. Therefore, the appellant is are entitled for additional amount of Rs.34,700/- under the three conventional heads."*

[29] Considering the above principles and applying the same in the case on hand, the claimants are entitled to the amount of **Rs. 18,150/- towards Funeral and Ritual Expenditure.**

[IV] <u>CONSORTIUM / LOVE AND AFFECTION</u>:

[30] In the present case, the applicant no. 1 has lost her husband, applicant nos. 2 & 3 have lost their father and applicant no. 4 & 5 has lost their son. The applicants have lost her beloved one at the point of time where they would love to have him the most. Consortium is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. Parental consortium is granted to the child upon the premature death of a parent, for loss of “parental aid, protection, affection, society, discipline, guidance and training. The Filial Consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime.

[31] Further, it would be beneficial to refer the Judgment in the case of ***Magma General Insurance Co. Ltd. Vs. Nanu Ram alias Chuhru Ram & Ors. decided in Civil Appeal No. 9581 of 2018 (Arising out of SLP (Civil) No.3192 of 2018)***, wherein the Hon'ble Apex Court has held that:

> *"...A Constitution Bench of this Court in Pranay Sethi (supra) dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is Loss of Consortium. In legal parlance, "Consortium" is a compendious term which encompasses 'spousal consortium', 'parental consortium' and 'filial consortium'...Parental consortium is granted to the child upon the premature. death of a parent, for loss of parental aid, protection,affection, society, discipline, guidance and training.”Consortium is a special prism reflecting changing norms*

> *about the status and worth of actual relationships. Modern jurisdictions world-over have recognized that the value of the compensation awarded in the case of the death of a child. Most jurisdictions therefore permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is a compensation for loss of the love, affection, care and companionship of the deceased child. The Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims. Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit. Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions world-over have recognized that the value of the compensation awarded in the case of the death of a child. Most jurisdictions therefore permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is a compensation for loss of the love, affection, care and companionship of the deceased child. The Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of Filial Consortium."*

[32] The above observation has been reiterated by the Hon’ble Apex Court in the case of ***New India Assurance Co. Ltd. vs. Somwati and others reported in 2020(9) SCC 644***, wherein the Hon’ble Apex Court has referred various citations and found it proper to award consortium to each of the claimants in accordance with law. Moreover, the Hon’ble High Court of Gujarat while deciding the case of ***Hirbai Keshavji Maheshwari (L.H. and representatives of Deceased Keshavji Balabhai Maheshwari) vs. Bajubhai Narshibhai Thakore in First Appeal***

No. 2831 of 2018 vide Judgment dated 22.11.2021 has also referred the above citations and observed in paragraph - 12 as under:

> *"12. In view of the above observations, we are of the opinion that in Indian society, care, concern, help, guidance and affection is not limited to spouse only. Therefore, the contention that aged mother and children are not entitled for filial and parental consortium in our opinion is contrary to the ratio of the above decisions and intent and object of payment of consortium."*

[33] Hence, keeping forefront the above observations of the Hon'ble Apex Court as well as the Hon'ble High Court of Gujarat, I am of the opinion to award applicants, a sum of **Rs. 2,42,000/- (Rs. 48,400/- x 5) as Consortium and Love and Affection.**

[V] <u>LOSS OF ESTATE</u>:-

[34] As per the Judgment of Hon'ble Apex Court in case of National Insurance company Ltd. vs. Pranay Shethi and others (supra), the applicant is entitled to **Rs. 18,150/- towards Loss of Estate.**

[35] In view of all the above aspects, the applicants are awarded the amount of compensation under following different heads:-

Loss of Dependency	:	Rs. 17,13,600/-
Medical Expenditure	:	Rs. 49,319/-
Funeral Charges	:	Rs. 18,150/-
Consortium	:	Rs. 2,42,000/-
Loss of Estate	:	Rs. 18,150/-
Total	**:**	**Rs. 20,41,219/-**

[35.1] As such, the applicants are entitled to above claim amount along with **7.5% interest** from the date of filing of the petition till realization. It will be profitable at this juncture to refer the judgment of the Hon'ble Apex Court in case of ***Nagappa v. Gurudayal Singh*** reported in ***AIR 2003 SC 674*** wherein it is held that the compensation should be JUST and Just Compensation would mean that it is moderate and reasonable and awardable in the proved circumstances of a particular case and the expression “which appears to it to be just” vests a wide discretion in the Tribunal in the matter of determining the compensation and the Tribunal in order to award just compensation can grant greater amount than claimed. Further in case of ***Sanobanu N. Mirza v. AMTS reported in 2013 ACJ 2 733***, it is held that the compensation can be awarded more than the claim amount as Tribunal has to award just compensation. Hence, despite applicants have claimed for Rs. 10,00,000/- as compensation, they are entitled to the above referred amount.

LIABILITY :

[36] The copy of Insurance policy has been produced at Exh. 44, perusal of the same transpires that on the day of the accident, the insurance was in force and the vehicle was insured with opponent No. 3 - Insurance Company.

[37] Ld. Advocate Mr. Desai appearing on behalf of the Opponent - Insurance Company has disputed the liability of the opponent - Insurance Company principally on the ground that the deceased was traveling in the vehicle involved in the accident as an unauthorized passenger, and that the risk of such passenger is not covered under the Insurance Policy of the vehicle involved in the accident.

[37.1] Ld. Advocate for the opponent- Insurance Company has drawn attention to the contentions raised regarding the gratuitous passenger in paragraphs 4 to 6 of its written statement at Exh. 23. It is contended that the FIR does not state that the deceased was traveling in the offending vehicle as a cleaner. It is further contended that the offending vehicle is a goods carrying vehicle and was being plied on the road without a valid permit. It is further contended that the police statements of the driver of offending vehicle, Rameshbhai Sukhdev More, and witness Ukabhai Jodhabhai Chosla, produced at Exh. 54 & 55 respectively, substantiate the say of the opponent - Insurance Company.

[37.2] It is further contended that the letter issued by the RTO, Botad dated 09.01.2025 is produced at Exh. 57, specifically stated that on the date of the accident, i.e. on 22.07.2017, the offending vehicle was being plied on the road without a valid permit. The investigator, Advocate Mr. Hiren A. Ashara, appointed by the opponent- Insurance Company has also reiterated the same facts. The R.C. Book produced at Exh. 59 also does not establish that the vehicle possessed a valid permit on the date of the accident. Therefore, it is contended that, since the offending vehicle did not have a valid permit to ply on the road, there was a fundamental breach of the terms and conditions of the insurance policy, and consequently the opponent- Insurance Company is liable to be exonerated.

[38] *Per contra*, the Ld. Advocate appearing for the applicants has vehemently opposed the contention raised by the Ld. Advocate for the opponent- Insurance Company and submitted that, at the outset, it has not been satisfactorily proved that the deceased was traveling as a gratuitous passenger, as no credible evidence has been produced by the opponent - Insurance Company in support of such contention. It is further submitted that plying the vehicle on the road without a valid permit cannot operate as a bar to the grant of compensation to a third party risk whose risk is otherwise covered under the insurance policy. Therefore, it is submitted that the contentions raised by the opponent- Insurance Company deserve to be rejected and the applicants be awarded just and reasonable compensation.

[39] Considering the documentary evidence in the form of the Letter issued by the RTO, Botad, dated 09.01.2025, the investigator's report, and the copy of the R.C. Book of the offending vehicle produced at Exh. 57 to 59 respectively, it is evident that, on the date of the accident, the offending vehicle did not possess a valid permit. It is not in dispute that the vehicle involved in the accident was required to have a valid permit to ply on road. It has also come on record that, at the time of the accident, the offending vehicle was being plied without such valid permit.

[39.1] In the aforesaid circumstances, the opponent - Insurance Company, at the first instance, cannot be fastened with liability on the account of breach committed by the insured. However, as rightly submitted by the Ld. Advocate for the applicants, the rights of third party claimants cannot be permitted to be prejudiced for such wrong on the part of insured. It will be profitable at this juncture to refer the Judgment of Hon'ble Apex Court in the case of ***K. Nagendra Versus New India Insurance***

Co. Ltd. & Ors. reported in ***2025 (0) AIJEL-SC 76060***, wherein, it is held that:-

> *"8. Now, let us consider the instant case. The record reveals that the offending vehicle did not have the permit to enter Channapatna City, where the accident took place. This position is not in dispute. Unquestionably, therefore, the terms of the permit have been deviated.*
> *9. The purpose of an insurance policy in the present context is to shield the owner/operator from direct liability when such an unforeseen/unfortunate incident takes place. To deny the victim/dependents of the victim compensation simply because the accident took place outside the bounds of the permit and, therefore, is outside the purview of the insurance policy, would be offensive to the sense of justice, for the accident itself is for no fault of his. Then, the Insurance Company most certainly ought to pay.*
> *10. At the same time though, when an Insurance Company takes on a policy and accepts payments of premium in pursuance thereto, it agrees to do so within certain bounds. The contract lays down the four corners within which such an insurance policy would operate. If that is the case, to expect the insurer to pay compensation to a third party, which is clearly outside the bounds of the said agreement would be unfair. Balancing the need for payment of compensation to the victim vis--vis the interests of the insurer, the order of the High Court applying the pay and recover principle, in our considered view, is entirely justified and requires no interference."*

[40] Moreover, as regards the contention of the opponent - Insurance Company that the deceased was a gratuitous passenger, it is true that the vehicle in question was a goods carriage vehicle. Neither the FIR, panchnama, charge-sheet or any other document produced by the applicants establishes that the deceased was travelling in the tempo as a cleaner. On the contrary, the police statements of the driver of the offending vehicle, Rameshbhai Sukhdev More, and witness

Ukabhai Jodhabhai Chosla at Exh. 54 & 55 respectively, also do not disclose that the deceased was travelling as a cleaner. In this context, it would be appropriate to refer the judgment of the Hon'ble Apex Court in the case of ***Mangla Ram Versus Oriental Insurance Company Limited*** reported in ***2018 (0) AIJEL-SC 62043*** as well as the Judgment of the Hon’ble High Court of Gujarat in the case of ***Hiraben Mangabhai Versus Maganbhai Somabhai*** reported in ***1997 (1) GLH 837***, wherein, it is held that the statement recorded u/s 161 of Cr.P.C though is inadmissible evidence as regards criminal trial and cannot be exhibited as far as MACP cases are concerned, same becomes admissible.

[41] Thus, considering above and the material available on record, it stands proved that the deceased was not travelling as a cleaner of the tempo and was, therefore travelling as an unauthorized passenger. At this juncture, it would also be profitable to refer the judgment of the Hon’ble Apex Court in ***Sunita Versus United India Insurance Co.Ltd.*** reported in ***2025 (0) ACJ 1841***, wherein, it is held that :-

> ***“13.*** *Adverting to the facts in hand, from a bare perusal of the record, it is borne that the vehicle in question was insured with Liability Only Policy and no premium was paid to cover the driver, owner, or a gratuitous passenger travelling therein. However, even then, in our view, the Courts below erred in holding that the Insurance Company is not liable to pay the compensation to the claimant-appellants, for the principle of Pay and Recover ought to have been invoked. As such, we are inclined to interfere with the above findings of the Courts below.*

> ***14.*** *We must advert to the exposition of this Court in* ***National Insurance Co. Ltd. v. Baljit Kaur, (2004) 2 SCC 1*** *. The deceased therein was travelling as a gratuitous passenger, and due to the rash and negligent driving of the offending vehicle, lost his life. The Insurance Company was directed to satisfy the amount awarded by the Courts below and recover the same from the owner of the vehicle, as the premium was not paid by the owner of the vehicle towards gratuitous passenger.*
> ***15.*** *The above position has been followed by this Court in* ***Anu Bhanvara v. IFFCO Tokio General Insurance Co. Ltd., (2020) 20 SCC 632*** *wherein the injured person was travelling as a gratuitous passenger and was not covered under the Insurance Policy, the driver and owner of the vehicle was held liable for payment of compensation amount. This Court applied the principle of Pay and Recover and directed the Insurance Company to pay the amount and, thereafter, recover the same from the owner of the vehicle.*
> ***16.*** *The aforementioned principle was adopted by this Court in various judgments of this Court in* ***Amrit Lal Sood v. Kaushalya Devi Thapar, (1998) 3 SCC 744; New India Assurance Co. Ltd. v. C.M. Jaya, (2002) 2 SCC 278; National Insurance Co. Ltd. v. Challa Upendra Rao, (2004) 8 SCC 517; New India Assurance Co. Ltd. v. Vimal Devi, 2010 SCC OnLine SC 49; National Insurance Co. Ltd. v. Saju P. Paul, (2013) 2 SCC 41; Manuara Khatun v. Rajesh Kumar Singh, (2017) 4 SCC 796; and Puttappa v. Rama Naik, 2018 SCC OnLine SC 3496****.*
> ***17.*** *Applying the above expositions of law, the Courts below ought to have directed the Insurance Company to indemnify the amount and thereafter recover the same."*

[42] Further, the Hon'ble Apex Court in the case of ***Akula Narayan Vs. The Oriental insurance Company Ltd. & Anr. in Civil Appeal No. 013509 of 2025 dated 10.11.2025,*** has held as under :-

> *"12. Where the contract of insurance is not disputed, even on breach of insurance conditions, this Court had allowed recovery of compensation from the insurer by giving right to the insurer to recover the same from the vehicle owner. The pay and recover principle has been consistently followed even though it was doubted in a reference which remained unanswered. Taking a conspectus of various pronouncements, this Court recently in Rama Bai Vs. Amit Minerals, again applied the said principle and while*

allowing the appeal of the claimant directed that the insurance company shall satisfy the award and may recover from the insured. Following the aforesaid decisions, we deem it appropriate to allow the appeal by directing that the first respondent (i.e., the insurer) shall satisfy the award , though, however, it can recover the amount so paid from the insured (i.e., owner of the vehicle).”

[43] The Hon'ble High Court of Gujarat in the case of ***The New India Assurance Co. Ltd. Vs. Nagjibhai Karmanbhai Bharwad & Ors.***, has observed that :-

“16.The manifest object of the provisions of the MV Act is to ensure that the party, who suffers injuries due to the use of the motor cycle, and may be able to get the damages for the injuries sustained/death. If the goods vehicle is used for carrying the passengers, against the insurance policy, as is in the case on hand, the claimants cannot suffer for the technicalities of whether the owner/insurance company should pay the amount. As the vehicle is insured with the insurance company, the insurance company shall first pay the compensation and it is for the insurance company to recover from the owner, if it so wishes. The same order is passed by the learned Tribunal and the interest of the insurance company is secured, in this case, which is just and proper and not required to be interfered with.”

[44] Moreover, in the case of ***Kaminiben and Ors. Vs. Oriental Insurance Company reported in 2026 Livelaw SC 174***, the Hon'ble Supreme Court has held that :-

“Even if an insurance company is not liable to pay compensation in an accident involving a passenger in a goods vehicle, it can be directed to first pay compensation to the claimants and then recover the amount from the vehicle owner, if the vehicle was hired for carrying goods and travel was only incidental.”

[45] Further, it is held by the Hon'ble High Court of Gujarat in the case of ***United India Insurance Company Ltd. Versus Minor Shobhaben Madhubhai Patadia*** reported in ***2025 (0) GUJHC 69050,*** as under:-

> *"4. Mr. Kirti Pathak, learned advocate for the appellant has assailed the impugned judgment and award on the grounds of quantum, sole negligence of the driver of the offending vehicle, invalid driving licence and the seating capacity as per the R.C. Book was only three passengers, whereas six claim petitions have been filed. She has further contended that the alleged vehicle was a goods vehicle and the claimants were travelling in it as gratuitous passengers. Since there was a clear breach of the insurance policy, the Insurance Company is not liable to pay any compensation. She has argued that the claimants were travelling in the goods vehicle without being owners of the goods, and therefore, they were gratuitous passengers. Hence, the learned Tribunal has grossly failed to consider the proviso to Section 147 of the Motor Vehicles Act . Relying upon the judgment of the Honble Apex Court in New India Insurance Company v. Asha Rani, AIR 2003 SC 607 , she submitted that the claimants were neither third parties nor passengers covered under the policy. Therefore, the Insurance Company cannot be saddled with liability. She further submitted that the learned Tribunal committed an error in directing the Insurance Company to pay and recover, despite the clear and fundamental breach of the policy on two counts; (i) the driver of the offending vehicle did not possess a valid and effective driving licence on the date of the accident, and (ii) the claimants were travelling as gratuitous passengers in a goods vehicle.*
>
> *4.1 Further, she has submitted that the direction to pay and recover is unsustainable, particularly when the Insurance Company had raised a statutory defence under Section 147 of the MV Act. There is a clear distinction between Sections 147 and 149 of the MV Act, and once a statutory defence under Section 147 is established, the learned Tribunal does not have the power to issue a pay-and-*

recover direction. Even under Articles 226 and 227 of the Constitution, the Court exercises constitutional and supervisory jurisdiction; however, the Tribunal does not possess any power akin to the extraordinary equitable jurisdiction of the Honble Supreme Court under Article 142. Such powers are exclusively vested in theHonble Supreme Court. Hence, once a statutory breach under Section 149(2) is established, liability cannot be fastened upon the Insurance Company on equitable grounds by directing a payand- recover order. Therefore, she has requested that the appeal be allowed, the impugned direction be quashed and set aside, and the Insurance Company be exonerated from liability. In support of her submissions, she has relied upon the following judgments; (i) United India Insurance Co. v. Minaben Bhupendrabhai Patel, 2016 (2) GLH (U.J.) (ii) New India Assurance Co. v. Asha Rani & Others, 2004 (2) TN MAC 387 (iii) National Insurance Co. v. Baljeet Kaur (iv) National Insurance Co. v. Ditabhai Raysinghbhai Labana, FA No.103 of 2002, decided on 15.03.2025 (v) New India Assurance Co. Ltd. v. Darshana Devi, 2008 ACJ 1388 (SC) (vi) National Insurance Co. Ltd. v. Proma Devi, Appeal (Civil) No.1667 of 2008 (vii) United India Insurance Co. Ltd. v. Anubai Gopichand Thakare, 2008 ACJ 213 (Bombay) (viii) Iffco- Tokio General Insurance Co. Ltd. v. Shankarlal & Ors., decided on 26.06.2008, 2009 ACJ 2618 (Madhya Pradesh High Court) (ix) Iffco-Tokio General Insurance Co. Ltd. v. Shankarlal & Ors. (x) First Appeal No.2929 of 2009; First Appeal No.3292 of 2005; First Appeal No.1529 of 2015 (xi) Oriental Insurance Company v. Sureshbhai & Others (xii) National Insurance Company Ltd. v. Shamalbhai Kodardas Khant & Others, First Appeal No.875 of 2017 (DB, order dated 30.09.2024), (xiii) Balu Krishna Chavan v. The Reliance General Insurance Company Limited, 2022 SCC OnLine SC 2331.

4.2 She has also relied upon the judgment of the Honble Apex Court in Bengal Immunity Company Limited v. State of Bihar, AIR 1955 SC 661 , particularly paragraph 24, and has requested the Court to consider the doctrine of stare decisis and to follow the authority relied upon by her in the case of Asha Rani (supra), which has not been overruled by any subsequent order passed by *the Honble Court while passing the order of pay and recover.*

5. Mr. Hemal Shah, learned advocate for the respondent has opposed the present appeal on the ground that the learned Tribunal has not committed any error in passing the order of pay and recover. He submitted that the Tribunal has elaborately discussed the legal position and, while relying upon the judgment of the Honble Supreme Court in Manuara Khatun v. Rajesh Singh, (2017) 4 SCC 796 , has rightly held that even in the case of gratuitous passengers, the claimants are entitled to recover the compensation amount from the insurer of the offending vehicle, with the insurer being granted the right to recover the same from the owner. Thus, adequate safeguard has been provided and the interest of the Insurance Company has been duly considered. Therefore, the Insurance Company cannot be exonerated from its legal liability to pay the awarded amount of compensation. He further submitted that the claimants are third parties, and the insurance policy produced on record clearly shows that the risk of third parties was covered under the policy. Consequently, the owner and the driver of the offending vehicle are vicariously liable to indemnify the third-party claimants. Hence, the learned Tribunal has not committed any error in fastening the liability jointly and severally. In support of his submissions, he has relied upon the judgments of the Honble Supreme Court in the cases of Shamanna v. Oriental Insurance Co. Ltd., (2018) 9 SCC 650 , wherein the order of pay and recover was affirmed, and Shivraj v. Rajendra, (2018) 10 SCC 432 , wherein it has been held that the High Court ought to pass an order of pay and recover, keeping in mind the ratio laid down in National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297 ; Mangla Ram v. Oriental Insurance Co. Ltd.; and Manuara Khatun v. Rajesh Kumar Singh (supra). He has also relied upon the orders passed by the Coordinate Bench in First Appeal No. 2376 of 2014, First Appeal No. 679 of 2016, and First Appeal No. 3715 of 2024, and has requested that the present appeals be dismissed, submitting that the Tribunal has the power to pass an order of pay and recover.

6. Having heard the learned advocates for the respective parties, it appears that the claimants were travelling in a goods vehicle as *gratuitous passengers, and this fact is not seriously disputed by the opponents. However, learned advocate for the respondents has supported the order passed by the Tribunal on the ground that the Tribunal has the power to pass an order of pay and recover, whereas thelearned advocate for the appellant has disputed the Tribunals authority to pass such an order. Therefore, this batch of appeals is required to be decided on a narrow compass.*

7. The main contention raised by the learned advocate for the appellant pertains to the powers of the Tribunal, particularly when a statutory defence has been raised under Section 147 of the Motor Vehicles Act. Section 147 defines the minimum statutory coverage required in a motor insurance policy to safeguard third-party interests at the time of an accident by mandating compulsory insurance. The statutory liability created under Section 147 extends only to the risks expressly enumerated therein, namely: (i) death or bodily injury of a third party, and (ii) the owners representative travelling in a goods vehicle. If the risk falls outside the scope of Section 147, the insurer has no statutory liability and cannot be compelled to pay. In contrast, Section 149(2) provides the insurer with specific statutory defences to avoid liability, commonly referred to as avoidance clauses. These defences permit the insurer to escape liability only in cases of proven fundamental breach. If the insurer successfully establishes a defence under Section 149(2), it may be exonerated from liability; however, if the insurer fails to prove such defence, it must indemnify the insured/owner in full. Thus, Sections 147 and 149 form the basic statutory framework governing the insurers liability. Section 149 specifically deals with the duty of insurers to satisfy judgments and awards passed against persons insured in respect of third-party risks. Section 149 reads as under:

> *(1) If, after a certificate of insurance has been issued under subsection (3) of section 147 in favour of the person by whom a policy has been effected, judgment or award in respect of any such liability as is required to be covered by a policy under clause (b) of sub-section (l) of section 147 (being a liability covered by the terms of the policy) or under the provisions of section 163A is obtained against any person*

insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

(2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had notice through the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely

a. that there has been a breach of a specified condition of the policy, being one of the following conditions, namely

(i) a condition excluding the use of the vehicle

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organised racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) without side-car being attached where the vehicle is a motor cycle; or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving license during the period of disqualification; or

(iii) a condition excluding liability for injury caused or

contributed to by conditions of war, civil war, riot or civil commotion; or

(b) that the policy is void on the ground that it was obtained by the non- disclosure of a material fact or by a representation of fact which was false in some material particular.

(3) Where any such judgment as is referred to in subsection (1) is obtained from a Court in a reciprocating country and in the case of a foreign judgment is, by virtue of the provisions of section 13 of the Code of Civil Procedure, 1908 (5 of 1908) conclusive as to any matter adjudicated upon by it, the insurer (being an insurer registered under the Insurance Act, 1938 (4 of 1938) and whether or not he is registered under the corresponding law of the reciprocating country) shall be liable to the person entitled to the benefit of the decree in the manner and to the extent specified in sub-section (1), as if the judgment were given by a Court in India:

Provided that no sum shall be payable by the insurer in respect of any such judgment unless, before the commencement of the proceedings in which the judgment is given, the insurer had notice through the Court concerned of the bringing of the proceedings and the insurer to whom notice is so given is entitled under the corresponding law of the reciprocating country, to be made a party to the proceedings and to defend the action on grounds similar to those specified in sub-section (2).

(4). Where a certificate of insurance has been issued under sub-section (3) of section 147 to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured thereby by reference to any condition other than those in clause (b) of sub-section (2) shall, as respects such liabilities as are required to be covered by a policy under clause (b) of subsection (1) of section 147, be of no effect:

Provided that any sum paid by the insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue only of this sub-section shall be *recoverable by the insurer from that person.*

(5) If the amount which an insurer becomes liable under this section to pay in respect of a liability incurred by a person insured by a policy exceeds the amount for which the insurer would apart from the provisions of this section be liable under the policy in respect of that liability, the insurer shall be entitled to recover the excess from that person.

(6) In this section the expression material fact and material particular means, respectively a fact or particular of such a nature as to influence the judgment of a prudent insurer in determining whether he will take the risk and, if so, at what premium and on what conditions, and the expression liability covered by the terms of the policy means a liability which is covered by the policy or which would be so covered but for the fact that the insurer is entitled to avoid or cancel or has avoided or cancelled the policy.

(7) No insurer to whom the notice referred to in sub-section (2) or sub-section (3) has been given shall be entitled to avoid his liability to any person entitled to the benefit of any such judgment or award as is referred to in sub-section (1) or in such judgment as is referred to in sub-section (3) otherwise than in the manner provided for in sub-section (2) or in the corresponding law of the reciprocating country, as the case may be.

8. As per Section 150, which pertains to the duty of insurers to satisfy judgments and awards against persons insured in respect of third-party risks, and keeping in mind the aforesaid facts, the Honble Supreme Court, in National Insurance Co. Ltd. vs. Swaran Singh, reported in (2004) 3 SCC 297 , has in paragraphs 83 and 102 observed as under:

83. Sub-section (5) of Section 149 which imposes a liability on the insurer must also be given its full effect. The insurance company may not be liable to satisfy the decree and, therefore, its liability may be zero but it does mean that it did not have initial liability at all. Thus, if the insurance company is made liable to pay any amount, it can recover the entire amount paid to the third party on behalf of the assured.

If this interpretation is not given to the beneficent provisions of the Act having regard to its purport and object, we fail to see a situation where beneficent provisions can be given effect to. Sub-section (7) of Section 149 of the Act, to which pointed attention of the Court has been drawn by the learned counsel for the petitioner, which is in negative language may now be noticed. The said provision must be read with sub-section (1) thereof. The right to avoid liability in terms of subsection (2) of Section 149 is restricted as has been discussed hereinbefore. It is one thing to say that the insurance companies are entitled to raise a defence but it is another thing to say that despite the fact that its defence has been accepted having regard to the facts and circumstances of the case, the Tribunal has power to direct them to satisfy the decree at the first instance and then direct recovery of the same from the owner. These two matters stand apart and require contextual reading. 102 the summary of our findings to the various issues as raised in these petitions are as follows:

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

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

(iii) The breach of policy condition e.g., disqualification of driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of Section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer

against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time.

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

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

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

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

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

(ix) The claims tribunal constituted under Section 165 read with Section 168 is empowered to adjudicate all claims in respect of the accidents involving death or of bodily injury or damage to property of third party arising in use of motor

vehicle. The said power of the tribunal is not restricted to decide the claims inter se between claimant or claimants on one side and insured, insurer and driver on the other. In the course of adjudicating the claim for compensation and to decide the availability of defence or defences to the insurer, the Tribunal has necessarily the power and jurisdiction to decide disputes inter se between insurer and the insured. The decision rendered on the claims and disputes inter se between the insurer and insured in the course of adjudication of claim for compensation by the claimants and the award made thereon is enforceable and executable in the same manner as provided in Section 174 of the Act for enforcement and execution of the award in favour of the claimants.

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

(xi) The provisions contained in sub-section (4) with proviso thereunder and sub-section (5) which are intended to cover specified contingencies mentioned therein to enable the insurer to recover amount paid under the contract of insurance on behalf of the insured can be taken recourse of by the Tribunal and be extended to claims and defences of

> *insurer against insured by relegating them to the remedy before regular court in cases where on given facts and circumstances adjudication of their claims inter se might delay the adjudication of the claims of the victims.*

9. Keeping in mind the aforesaid provision, more particularly paragraph 102(x), the Honble Supreme Court has held that where, upon execution of the claim, the Tribunal concludes that the insurer has satisfactorily proved its defence, the Tribunal may direct that the insurer is entitled to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party. Paragraph 102(xi) further provides that the provisions contained in sub-section (4) with the proviso thereunder, and sub-section (5), are intended to cover the specified contingencies mentioned therein so as to enable the insurer to recover the amount.

10. In the present case, the Insurance Company has submitted that on the ground of violation of the terms and conditions of the insurance policy, it is required to be exonerated from its liability. However, an insurance policy is a statutory contract entered into between the insurer and the insured for the benefit of third parties. The aforesaid ratio has also been followed by the Honble Apex Court in Shamanna vs. Oriental Insurance Co. Ltd., (2018) 9 SCC 650 , wherein, while considering Sections 147 and 149 of the Motor Vehicles Act, it has been held that the victim of a motor vehicle accident is a third party, and it is the statutory duty of the insurer to satisfy the award. The principle of pay and recover has been reiterated, holding that if the driver had no valid driving licence and there was a breach of policy conditions, the High Court ought not to interfere with the order of pay and recover passed by the Tribunal. If the Insurance Company has paid any amount, the mode of recovery is also provided, and the insurer has the liberty to initiate proceedings before the executing Court concerned, if the dispute is between the insurer and the owner. In the present case, the claimant is a third party and has no concern with the inter se terms and conditions of the insurance policy. Hence, in view of the decisions of the Honble Supreme Court in Anu Bhanvara & Ors. vs. IFFCO Tokio General Insurance Co. Ltd.

& Ors., (2020) 20 SCC 632; Sunita & Ors. vs. United India Insurance Co. Ltd. & Ors.; and Rama Bai vs. M/s. Amit Minerals, 2025 INSC 1162 , the learned Tribunal has not committed any error in directing pay and recover.

10.1 Further, this Court deems it fit to refer to the judgment of the Honble Apex Court in Sadhna Tomar v. Ashok Kushwaha, 2025 SCJ 414 , wherein the Tribunal was pleased to pass an award of compensation in favour of the claimant, holding that the Insurance Company shall pay the amount of compensation to the claimant and thereafter recover the same from the driver and owner of the offending vehicle, who were held jointly and severally liable, relying on the decision in Swaran Singh (supra). The said view was affirmed by the High Court, and the order of pay and recover was also upheld by the Honble Apex Court. In view of the above, the learned Tribunal has not committed any error in passing the order of pay and recover.

11. The Honble Supreme Court in the cases of Shamanna (supra), Rama Bai (supra), and Swaran Singh (supra) has consistently held that the insurer must first pay the compensation amount to the third party and may thereafter recover the same from the insured. Even though the insurer is entitled to raise a valid defence regarding the driver not possessing a valid driving licence under Section 149(2)(a)(ii) to avoid liability, and even if the conditions of law are satisfied to absolve the insurer from paying the compensation, the doctrine of pay and recover continues to apply.

12. In view of the judgment of the Honble Supreme Court in Rambabu Tiwari vs. United India Insurance Co., (2008) 8 SCC 165 , wherein the Court exonerated the Insurance Company from liability for breach of policy conditions but refused to interfere with the order of pay and recover, the direction issued by the learned Tribunal in the present case also does not warrant any interference.

13. In view of the decision of the Honble Supreme Court in K. Nagendra vs. New India Insurance Co. Ltd., 2025 SCC OnLine SC 2297 , the authority relied upon by the learned advocate for the appellant is not helpful. In all the authorities referred to by the appellant, there is no reference to the case of Shamanna (supra), *wherein the powers of the Tribunal to pass an order of pay and recover were upheld. In Shamanna (supra), the Honble Supreme Court has specifically observed in paragraphs 6, 7, 11, 12, and 13 as under:*

> *6. As per the decision in Swaran Singh case, onus is always upon the insurance company to prove that the driver had no valid driving licence and that there was breach of policy conditions. Where the driver did not possess the valid driving licence and there are breach of policy conditions, "pay and recover" can be ordered in case of third-party risks. The Tribunal is required to consider as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver does not fulfil the requirement of law or not will have to be determined in each case.*
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> *7. The Supreme Court considered the decision of Swaran Singh case in subsequent decision in National Insurance Co. Ltd. v. Laxmi Narain Dhut. wherein this Court held that (SCC p. 705, para 5) 5. The decision in Swaran Singh case) has no application to cases to indemnify the amount and if so advised, to recover the same from the other than third-party risks and in case of third-party risks the insurer has insured."*
>
> *8. The same principle was reiterated in Premkumari v. Prahlad Dev.*
>
> *9. For the sake of completion, we may refer to few judgments where the breach of policy conditions was fundamental and the Supreme Court taking contrary view that the insurance companies were not liable to pay the compensation. In National Insurance Co. Ltd. v. Bommithi Subbhayamma making the insurance company liable for payment of compensation in respect the Supreme Court reversed the judgment of Andhra Pradesh High Court in of gratuitous passengers carried in the goods vehicle.*
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> *10. In Oriental Insurance Co. Lid. v. Brij Mohon?, the claimant was travelling in the trolley attached to tractor carrying earth to brick kiln. It was d found that the tractor and the trolley were not used for "agricultural works", the only purpose for which the tractor was insured, when the*

claimant sustained the injuries. The Supreme Court though held that the insurance company is not liable to pay compensation, however, invoked the power vested in the Supreme Court under Article 142 of the Constitution of India in directing the insurance company to satisfy the award by paying compensation to the insured/claimant e and realise the same from the owner of the tractor.

11. In the present case, to deny the benefit of "pay and recover", what seems to have substantially weighed with the High Court is the reference to larger Bench made by the two-Judge Bench in National Insurance Co. Ltd. v. Parvathnenis which doubted the correctness of the decisions which in exercise of jurisdiction under Article 142 of the Constitution of India directing insurance company to pay the compensation amount even though insurance company has no liability to pay. In Parvathneni cases, the Supreme Court pointed out that Article 142 of the Constitution of India does not cover such type of cases and that: (SCC p. 786, para 5):

"5. If the insurance company has no liability to pay at all, then, it cannot be compelled by order of the court in exercise of its jurisdiction under Article 142 of the Constitution of India to pay the compensation amount and later on recover it from the owner of the vehicle."

12. The above reference in Parvathneni cases has been disposed of on 17-9-2013 by the three-Judge Bench keeping the questions of law open to be decided in an appropriate case.

13. Since the reference to the larger Bench in Parvathneni cases has been disposed of by keeping the questions of law open to be decided in an appropriate case, presently the decision in Swaran Singh case followed in cases hold the field. The award Tribunal directing the insurance company to pay the compensation amount awarded to the claimants and thereafter, recover the same from the owner of the b vehicle in question, is in accordance with the judgment passed by this Court in Swaran Singh and Laxmi Narain Dhur cases. While so, in our view, the High Court ought not to have *interfered with the award passed by the Tribunal directing the first respondent to pay and recover from the owner of the vehicle. The impugned judgment of the High Court exonerating the insurance company from its liability and directing the claimants to recover the compensation from the owner of the vehicle is set aside and the award passed by the Tribunal is restored.*

14. In view of the reliance placed by the learned advocate for the appellant, no assistance can be derived by the appellant Insurance Company, as the Honble Supreme Court has reaffirmed the social welfare intent underlying the Motor Vehicles Act. The principle or order of pay and recover embodies judicial empathy, ensuring that victims are not left uncompensated due to disputes between the owner and the insurer. At the same time, considering contractual accountability, an owner who breaches the conditions of the policy cannot escape financial responsibility, as insurers retain the right to recover the amount paid to the claimant. This dual balance justice to the victim and fairness to the insurer strengthens the integrity of the Motor Vehicles accident compensation system.

15. As regards the authority relied upon by the learned advocate for the appellant, in view of several judgments wherein the Honble Apex Court has passed orders in the cases of Shamanna (supra), Parminder Singh v. New India Assurance Company Limited, (2019) 7 SCC 217, and Chatha Service Station v. Lalmati Devi, 2025 INSC 468 , the learned Tribunal has not committed any error. The authorities relied upon by the learned advocate for the appellant nowhere refer to the case of Samanna (supra). With respect to the judgment relied upon by the learned advocate for the appellant in Balu Krishna Chavan (supra), the Honble Court has passed the order of pay and recover with a specific direction that the said pronouncement shall not be treated as a precedent. Hence, the argument advanced by the learned advocate for the appellant is also not acceptable. Hence, the authorities relied upon by the learned advocate Ms. Pathk for the appellants would not avail any assistance.

16. In so far the doctrine of stare decisis is concerned and considering the various pronouncements of Honble Apex Court on *the subject of precedential or binding strength of decision following fact is culled out :*

> *Where a Judge finds that different views have been taken by different judgments of Supreme Court, the court have to decide which of the decisions will prevail, by applying the following well-recognized principles (not exhaustive):*
>
> *(a) The decisions of larger Benches will prevail over the decisions of smaller Benches of the same Court. In fact, the decision of a smaller Bench is deemed to be overruled, if a subsequent larger Bench lays down the law to the contrary (for this purpose, the decision of the majority of a threeJudge Bench will be considered to be the decision of a larger Bench, when compared to an earlier decision of a two-Judge Bench). Where, however, the decision of an earlier larger Bench has been noticed and explained, then the decision of the later smaller Bench will be the binding precedent.*
>
> *(b) A decision which merely adds to the principle stated by a larger Bench or explains the earlier decision of a larger Bench will not be considered to be a decision in conflict with the earlier larger Bench.*
>
> *(c) If the decisions of coordinate Benches of equal strength differ, and the later decision does not notice or explain the earlier decision(s), then, the court may choose that decision which it considers to be more closer to the facts of the case or which more directly deals with the legal issue. Where, however, the later decision notices the earlier decision and distinguishes it, the subsequent decision will prevail over the earlier decision.*
>
> *(d) If a court considering a particular provision of law has two decisions before it, one laying down thelaw with reference to the same or identical provision of law, and the other laying down the lawwithreference to a similar but not an identical provision, the court is bound to follow the decision that deals with the same/identical provision, even though the other decision with reference to a similar but not identical section, is of a larger Bench or of a later date.*
>
> *(e) When a Constitution Bench has rendered a decision on an*

> *issue, the subsequent Benches of lesser strength decide a similar question somewhat differently, and do not explain the decision of the earlier Constitution Bench, the later decision(s) should be. construed in consonance with the principles laid down by the Constittion Bench, as the subsequent smaller Benches could not be taken to have intended a different view. Same principle will apply in considering the inter se preferability of the decisions of the High Court.*

17. Moreover, I lay hand on decision of the Madhya Pradesh High Court rendered in the case of Smt. Kalabai Choubey and Others vs. Rajabahadur Yadav and Another reported in AIR 2002 Madhya Pradesh 8 in paragraph 47 has discussed about the binding nature of direct conflict between the decisions of coequal Benches of Honble Supreme Court and come to conclusion that High Court is bound to follow the judgment which appears to state law more elaborately and more accurately and in confirmity with scheme of a statute and both views of Supreme Court are not binding. Paragraph 47 of the said decision reads as follows: 47. It is, therefore, obvious that even where there is a direct conflict between the decisions of the coequal Benches of Supreme Court, the High Court has to follow the judgment, which appears to it to state the law more elaborately and more accurately and in conformity with the scheme of the Act. Both the views of the Supreme Court cannot be binding on the courts below. In such a situation, a choice, however difficult it may be, has to be made upon by the appellants cannot come to their rescue.

18. In view of the above, the Honble Apex Court has already decided the issue in Swaran Singh (supra). Considering the subsequent pronouncements discussing the scope of the pay and recover order and the benevolent object of the legislation, as earlier explained in paragraph 14 of this order, the principle of pay and recover reflects judicial empathy ensuring that victims are not left uncompensated due to disputes between the owner and the insurer. Therefore, the argument canvassed by the learned advocate for the appellant regarding contractual accountability is not acceptable and Tribunal has not committed any error in passing *the order of pay and recover.*

19. The appellantInsurance Company is directed to pay the amount of compensation determined by the Tribunal, with liberty to recover the same from the owner of the offending vehicle in accordance with law. In view of the law laid down by the Honble Apex Court in Oriental Insurance Co. Ltd. v. Nanjappan, (2004) 13 SCC 224 , it is always open for the Insurance Company to recover the amount from opponent Nos. 1 and 2 by initiating appropriate proceedings before the Executing Court, without being required to file a separate suit. While passing the order of "pay and recover", the Tribunal shall issue appropriate directions to protect the interest of the Insurance Company, as directed by the Honble Apex Court in Nanjappan (supra), subject to suitable conditions and safeguards.

20. Herein it is needless to say that as the Insurance Company, having the right to recover the amount from opponent Nos. 1 and 2 driver, owner and insurance company has to make appropriate request or to file proceedings before the Tribunal to recover the amount and to take appropriate steps against the owner of the vehicle, i.e., opponent No. 2 for furnishing security of amount that the insurer is required to pay or paid to the claimants, and the offending vehicle shall be attached as part of such security. If necessity arises, the appellantInsurance Company may take assistance from the concerned Regional Transport Authority also, and make request to the Executing Court to pass appropriate orders in accordance with law.

21. In view of the above conspectus, no interference is called for in order passed by the learned Tribunal of pay and recover. The present First Appeals stand dismissed at the admission stage."

[46] Considering the above observations and the facts of the present case, it comes on record that there has been a violation of the terms and conditions of the insurance policy on the part of the insured. Nevertheless, the opponent- Insurance Company is liable to first pay the compensation awarded to the applicants and shall thereafter be entitled to recover the same from the owner/insured of the offending vehicle in accordance with law.

It is also clarified that opponent No. 4 - Pathan Sikandar Kalubhai is shown as the owner of the vehicle in the copy of the R.C. Book produced at Exh. 59 as well as Letter issued by RTO, Botad dated 09.01.2025 produced at Exh. 57.

[47] In view of the foregoing findings, the issue of liability is decided and the following final order is passed:

:: ORDER ::

1. The present M.A.C. Petition is hereby **partly allowed.**

2. The applicant/s are entitled to compensation of **Rs. 20,41,219/- (Rupees Twenty Lakh Forty-One Thousand Two Hundred and Nineteen Only)** with running interest at the rate of **7.5% p.a.** from the date of filing the petition till realization of the amount along with the proportionate costs of the petition.

3. **Opponent No. 1 (Driver) and Opponent No. 4 (Owner)**

are held jointly and severally liable to compensate the applicants. It is clarified that the opponent No. 3 - Insurance Company is exonerated, however, is directed to satisfy the award and would be at liberty to recover the same from the insured.

4. The opponents will follow the guidelines of Hon'ble Gujarat High Court given in para 14 in the case of Hansagauri Prafulchandra Ladhani cited at 2007 ACJ 1897, with regard to the Income Tax Liability.

5. The opponents are hereby directed to deposit in the office of this Tribunal the above amount of award, after deducting the amount of interim compensation, if any, paid u/s. 140 of the M. V. Act within one month from the date of this order.

6. The insurance Company is directed to deposit the Awarded amount with interest as per the direction given by the Hon'ble Supreme Court in Writ Petition(s) (Civil) No. 534/2020 through RTGs or NEFT mode in the account of Additional District Judge, Surat. The details of the account are as under:-

Branch	:	State Bank of India, Nanpura Branch, Surat
A/c. Name	:	Additional District Judge, Surat

A/c. No.	:	40750729019
IFSC	:	SBIN0001388
MICR	:	395002004

7. After depositing the awarded amount in the above account, the insurance company shall inform and send the copy of the said bank advice to the M.A.C. Tribunal through e-mail ID No. dcourt-mact-sut@gujarat.gov.in.

8. The applicant/s shall provide details of PAN Card, Adhar Card and Saving Bank Account for transfer of compensation as per the direction given by the Hon'ble Supreme Court in Writ Petition(s) (Civil) No. 534/2020.

9. On depositing the above amount of award by the opponents in this Tribunal, the amount of Court Fee Stamp, if recoverable on the awarded amount, be recovered from the awarded amount and the same be taxed as the costs of the petition.

10. After above deductions, 70% amount be deposited in the name of applicants, in any nationalized bank of the choice of the applicants, for a period of FIVE YEARS and remaining amount of 30% be paid to the respective

applicants by Account Payee Cheque, after due verification.

11. Award be drawn accordingly.

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

    i) The said amount shall be invested with any of the nationalized Bank of the choice of the applicant in Fixed Deposit Receipt Account.

    ii) The interest on the above Fixed Deposit Receipt Account as and when it becomes payable monthly, quarterly, half-yearly or annually, as agreed to, shall be paid to the applicant.

    iii) No facility by way of loan, over-draft or cash credit shall be available on the above investment and the Bank shall not allow any such transaction, encumbering the investment or on the basis of the security of the same.

    iv) The Bank shall not permit the applicant to withdraw the said amount prior to its maturity or without prior permission of this Tribunal.

    v) The Bank shall intimate to this Tribunal the particulars of the investment viz., number of Fixed Deposit Receipt, name of holder and the date of maturity immediately after issuance of Fixed Deposit Receipt in this case.

vi) At the end of the period aforesaid, the Bank shall pay the principal amount to the payee, the concerned applicant.

Pronounced in open Court today on this
28th day of July, 2026.

Date : 28.07.2026
Place : Surat.

(Rahul Arunkumar Trivedi)
Chairman
M. A. C. Tribunal (Main),
Surat.
Code No. GJ01495.

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