M.A.C.P. NO. 133 OF 2018

GJVD010024402018

सत्यमेव जयते

Received on	**28/03/2018**
Registered on	**28/03/2018**
Decided on	**01/01/2026**
Duration	**07 YY 08 MM 22 DD**

BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL (Auxi.) , VADODARA, AT VADODARA

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M.A.C.P. No. 133/2018

Ex. 186

CLAIMANT :	**AGE**	**OCCUPATION**
Sakshi Girishbhai Masand	22	Study

Residing at:-
52/A, Nilkanth Society,
Shree Sambhavnath Road,
Nr. Lience Hall,
Gadapura, Vadodara

V/s.

Driver, Owner and Insurance Company of

Truck bearing registration No. GTJ - 5269

(1) Sukhabhai Madhavsinh Waghela Adult Driver

Residing at:-

Nani Khadaki
At. - Amiyad, Tal. Borsad
Dist. - Anand

(2) Ashokbhai Ravjibhai Prajapati Adult Owner

Residing at:-

Prajapati Niwas, Bhadaran
Tal. Borsad, Dist. Anand

(3) Magma HDI General Insurance Co. Ltd. Insurance Co.

Office at:-
2nd Floor, Office No. 1,2,3 Petriot Complex
B/H Inox, Race Course Circle,
Vadodara.

Driver, Owner and Insurance Company of
Ecco Car bearing registration No. GJ-06-KP-1407

(4) Pinaben @ Pinalben Hemrajbhai Chaudhary Owner

(As the driver and owner of the Ecco car died in the accident, his wife, being his legal heir, has been joined as a party.)

(5) The New India Insurance Co. Ltd. Ins. Co.

Office at:-
Suraj Plaza Building
Sayajigunj, Vadodara

M.A.C.P. NO. 134 OF 2018

GJVD010024412018

Received on	**28/03/2018**
Registered on	**28/03/2018**
Decided on	**01/01/2026**
Duration	
	YY MM DD

BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL (Auxi.),VADODARA, AT VADODARA.

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M.A.C.P. No. 134/2018

Ex.-

CLAIMANT :	**AGE**	**OCCUPATION**
Tanviben Pratikbhai Dalvi	31	-

Residing at:-
B/2/302, Olivegress Apartment
Nr. Gokul Party Plot,
Saiyad Vasana, Vadodara

V/s.

Driver, Owner and Insurance Company of

Truck bearing registration No. GTJ - 5269

(1)	Sukhabhai Madhavsinh Waghela	Adult	Driver

Residing at :-
Nani Khadaki
At. - Amiyad, Tal. Borsad
Dist. - Anand

(2)	Ashokbhai Ravjibhai Prajapati	Adult	Owner

Residing at:-
Prajapati Niwas, Bhadaran
Tal. Borsad, Dist. - Anand

(3) Magma HDI General Insurance Co. Ltd. Insurance Co.

Office at:-
2nd Floor, Office No. 1,2,3 Petriot Complex
B/H Inox, Race Course Circle,
Vadodara.

Driver, Owner and Insurance Company of

Ecco Car bearing registration No. GJ-06-KP-1407

(4) Pinaben @ Pinalben Hemrajbhai Chaudhary
Owner

(As the driver and owner of the Ecco car died in the accident, his wife, being his legal heir, has been joined as a party.)

(5) The New India Insurance Co. Ltd. Ins. Co.

Office at:-
Suraj Plaza Building
Sayajigunj, Vadodara

M.A.C.P. NO. 135 OF 2018

GJVD010024422018

Received on	**28/03/2018**
Registered on	**28/03/2018**
Decided on	**01/01/2026**
Duration	
	YY MM DD

सत्यमेव जयते

BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL (Auxi.) , VADODARA, AT VADODARA.

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M.A.C.P. No. 135/2018

Ex...........

CLAIMANT :		**AGE**	**OCCUPATION**
Legal heirs of the deceased Maitriben Satisbhai Rajput			
1.	Satishbhai Hasmukhbhai Rajput	46	Business
2.	Binitaben Satishbhai Rajput	46	Household

Both are Residing at:-
C/33, Shivanjali Society,
Opp. Bansal Mall, Gotri, Vadodara

V/s.

Driver, Owner and Insurance Company of Truck bearing registration No. GTJ - 5269

(1)	Sukhabhai Madhavsinh Waghela	Adult	Driver

Residing at :-
Nani Khadaki
At. - Amiyad, Tal. Borsad
Dist. - Anand

(2)	Ashokbhai Ravjibhai Prajapati	Adult	Owner

Residing at:-
Prajapati Niwas, Bhadaran
Tal. Borsad, Dist. - Anand

(3) Magma HDI General Insurance Co. Ltd. Insurance Co.

Office at:-
2nd Floor, Office No. 1,2,3 Petriot Complex
B/H Inox, Race Course Circle,
Vadodara.

Driver, Owner and Insurance Company of

Ecco Car bearing registration No. GJ-06-KP-1407

(4) Pinaben @ Pinalben Hemrajbhai Chaudhary
Owner

(As the driver and owner of the Ecco car died in the accident, his wife, being his legal heir, has been joined as a party.)

(5) The New India Insurance Co. Ltd. Ins. Co.

Office at:-
Suraj Plaza Building
Sayajigunj, Vadodara

M.A.C.P. NO. 136 OF 2018

GJVD010024462018

सत्यमेव जयते

Received on	**28/03/2018**
Registered on	**28/03/2018**
Decided on	**01/01/2026**
Duration	
	YY MM DD

BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL (Auxi.) , VADODARA, AT VADODARA.

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M.A.C.P. No. 136/2018

Ex...........

CLAIMANT :	**AGE**	**OCCUPATION**
Palak Mukeshkumar Shah	20	Study

Residing at:-
23, Laxmi Colony,
B/H Dinesh Mill, Urmi Char Rasta,
Akota, Vadodara

V/s.

Driver, Owner and Insurance Company of Truck bearing registration No. GTJ - 5269

(1)	Sukhabhai Madhavsinh Waghela	Adult	Driver

Residing at :-
Nani Khadaki
At. - Amiyad, Tal. Borsad
Dist. - Anand

(2) Ashokbhai Ravjibhai Prajapati Adult Owner

Residing at:-
Prajapati Niwas, Bhadaran
Tal. Borsad, Dist. - Anand

(3) Magma HDI General Insurance Co. Ltd. Insurance Co.

Office at:-
2nd Floor, Office No. 1,2,3 Petriot Complex
B/H Inox, Race Course Circle,
Vadodara.

Driver, Owner and Insurance Company of

Ecco Car bearing registration No. GJ-06-KP-1407

(4) Pinaben @ Pinalben Hemrajbhai Chaudhary
Owner

(As the driver and owner of the Ecco car died in the accident, his wife, being his legal heir, has been joined as a party.)

(5) The New India Insurance Co. Ltd. Ins. Co.

Office at:-
Suraj Plaza Building
Sayajigunj, Vadodara

M.A.C.P. NO. 137 OF 2018

GJVD010024472018

सत्यमेव जयते

Received on	**28/03/2018**
Registered on	**28/03/2018**
Decided on	**01/01/2026**
Duration	
	YY MM DD

BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL
(Auxi.) , VADODARA, AT VADODARA.

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M.A.C.P. No. 137/2018

Ex...........

CLAIMANT :		**AGE**	**OCCUPATION**

Legal heirs of the deceased
Hemrajbhai Virsangbai Chaudhary

1.	Pina @ Pinalben Hemrajbhai Chaudhary	37	Household
2.	Minor Zarana Hemrajbhai Chaudhary	08	Study

Applicant No.1 is a mother and guardian of the applicant No.2

Both Residing at:-
49, Saraswati Township,
Makarpura,
B/H S.T.Depot,
Vadodara

V/s.

Driver, Owner and Insurance Company of

Truck bearing registration No. GTJ - 5269

(1) Sukhabhai Madhavsinh Waghela Adult Driver

Residing at :-
Nani Khadaki
At. - Amiyad, Tal. Borsad
Dist. - Anand

(2) Ashokbhai Ravjibhai Prajapati Adult Owner

Residing at:-
Prajapati Niwas, Bhadaran
Tal. Borsad, Dist. - Anand

(3) Magma HDI General Insurance Co. Ltd. Insurance Co.

Office at:-
2nd Floor, Office No. 1,2,3 Petriot Complex
B/H Inox, Race Course Circle,
Vadodara.

M.A.C.P. NO. 138 OF 2018

GJVD010024482018	**Received on**	**28/03/2018**
	Registered on	**28/03/2018**
	Decided on	**01/01/2026**
	Duration	
		YY MM DD

BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL (Auxi.) , VADODARA, AT VADODARA.

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M.A.C.P. No. 138/2018

Ex...........

CLAIMANT :	**AGE**	**OCCUPATION**
Drashti Ashokbhai Patel	21	Study

Residing at:-
3, Ramtirth Society,
Nr. Ushanagar Vad,
Nr. Rupal Park,
Gotri, Vadodara

V/s.

Driver, Owner and Insurance Company of Truck bearing registration No. GTJ - 5269

(1)	Sukhabhai Madhavsinh Waghela	Adult	Driver

Residing at :-

Nani Khadaki
At. - Amiyad, Tal. Borsad
Dist. - Anand

(2) Ashokbhai Ravjibhai Prajapati Adult Owner

Residing at:-
Prajapati Niwas, Bhadaran
Tal. Borsad, Dist. - Anand

(3) Magma HDI General Insurance Co. Ltd. Insurance Co.

Office at:-
2nd Floor, Office No. 1,2,3 Petriot Complex
B/H Inox, Race Course Circle,
Vadodara.

Driver, Owner and Insurance Company of

Ecco Car bearing registration No. GJ-06-KP-1407

(4) Pinaben @ Pinalben Hemrajbhai Chaudhary
Owner

(As the driver and owner of the Ecco car died in the accident, his wife, being his legal heir, has been joined as a party.)

(5) The New India Insurance Co. Ltd. Ins. Co.

Office at:-
Suraj Plaza Building
Sayajigunj, Vadodara

Subject : Claim Petition filed U/s. 166 of the M.V. Act, 1988 to get Compensation of Rs.15,00,000/- , Rs, 5,00,000/- , Rs. 45,00,000/-, RS. 20,00,000/-, Rs, 45,00,000/-, Rs. 8,00,000- respectively.

APPEARANCE :

- Ld. Advocate Mr. V.P. Gupta for the applicants in all petitions
- Ld. Advocate Mr. Kamlesh Patel for the opponent Nos. 3 in all the petitions.
- Ld. Advocate Mrs. Manju Kella for the opponent Nos. 5 in all the petitions
- Nobody has appeared on behalf of the opponent Nos. 1,2 and 4.

JUDGMENT

(1) As all these claim petitions have arisen out of the same accident, all these petitions are ordered to be consolidated as per order dated 17/01/2022 passed below Ex. 20 in M.A.C.P No. 133/2018 and therefore, all these petitions are being decided together by this common judgment.

(2) The claim petition M.A.C.P No. 133/2018 has been filed by the applicant claiming compensation to the tune of Rs.15,00,000/- under section 166 of the Motor Vehicle Act,for the injuries sustained by her in the accident which had taken place on 20/01/2018.

(3) The claim petition M.A.C.P No. 134/2018 has been filed by the applicant claiming compensation to the tune of Rs.5,00,000/- under section 166 of the Motor Vehicle Act, for the injuries sustained by her in the accident which had taken place on 20/01/2018.

(4) The claim petition M.A.C.P. No. 135/2018 has been filed by the father and mother of the deceased, Maitry Satishbhai Rajput, seeking compensation of Rs. 45,00,000/- under Section 166 of the M.V. Act for the death of Maitry Satishbhai Rajput, who died in the accident that occurred on 20/01/2018.

(5) The claim petition M.A.C.P No. 136/2018 has been filed by the applicant claiming compensation to the tune of Rs. 20,00,000/- under section 166 of the Motor Vehicle Act, for the injuries sustained by her in the accident which had taken place on 20/01/2018.

(6) The claim petition, M.A.C.P. No. 137/2018, has been filed by the wife and daughter of the deceased, Hemrajbhai Virsangbhai Chaudhary, seeking compensation to the tune of Rs. 45,00,000/- under Section 166 of the M.V. Act for the death of Hemrajbhai Virsangbhai Chaudhary, who died in the accident that occurred on 20/01/2018.

(7) The claim petition, M.A.C.P. No. 138/2018, has been filed by the applicant seeking compensation of Rs. 8,00,000/- under Section 166 of the Motor Vehicles Act for the injuries sustained by her in the accident that took place on 20/01/2018.

It is necessary to mention the fact that all claim petitions from MACP No. 133/2018 to 138/2018 have been ordered to be conducted together by this Tribunal. In this regard, all evidence has been recorded in MACP No. 133/2018, and any evidence presented in the other applications has been sequentially exhibited in connection with MACP No. 133/2018. Subsequently, while determining other petitions finally, the evidence taken into account from MACP No. 133/2018, which pertains to the applicants of that specific MACP has been considered and the final judgement has been delivered accordingly.

(8) The short facts giving rise to these petitions are as follows :

(In M.A.C.P Case No. 133/2018 - INJURED)

(8.1) It has been the case of the claimant that on 20/01/2018, the applicant left for Vadodara from Karamsad Medical College, Karamsad with her friends in Ecco Car bearing registration No. GJ-06-KP-1407 at afternoon and at 2:00 p.m the driver of the Ecco Car was passing from the place of accident i.e road heading towards Sindhrot from Bhimpura Three Road in the sim of Bhimpura village, at slow speed and on correct side of the road by obeying traffic rules at that time, the opponent No.1, driver of the Truck bearing registration No. GTJ-5269 came driving it from opposite side on wring direction at full speed and in rash and negligent manner and dashed it with the Ecco car, as a result of which, the applicant had sustained injuries on hip of right leg, forehead, shoulder, chest and head and also sustained injuries on other parts of the body. In the said accident, driver and other two girls died and two girls sustained injuries.

(8.2) That after the accident, the applicant was firstly taken to Sterling Hospital for treatment and she was admitted as an indoor patient and X-ray Photo, C.T. Scan and other test of the applicant was taken and in the medical test, fracture of femure bone M-3 appears on right leg, fracture of first and second rib was also found and the applicant had sustained serious injuries on head. That, the rod was inserted in right leg of the applicant during operation. That the applicant was discharged on 02/02/2018. That the applicant incurred medical expenses to the tune of Rs. 4,00,000/-. That in the accident the laptop of H.P. Company owned by the applicant was damaged and therefore, the applicant had to suffer a loss of Rs. 46,660/- of the laptop. In the said accident the watch of the applicant was damaged and therefore, the applicant had to suffer a loss of Rs. 32,500/- of the watch. That, the F.I.R was filed against the driver of the truck i.e opponent No. 1., Sukhabhai Madhavsinh Waghela in Vadodara Taluka Police Station vide Guna Regi. I - 05/2018.

(8.3) That at the time of accident, the applicant was doing internship after completing Physiotherapy study in K.M.Patel Institute of Physiotherapy College, Karamsad. Thus, with the aforesaid contentions, this claim petition has been filed.

(In M.A.C.P Case No. 134/2018 - INJURED)

(8.4) It has been the case of the claimant that on 20/01/2018, the applicant left for Vadodara from Karamsad Medical College, Karamsad, with her friends in an Ecco car bearing registration No. GJ-06-KP-1407 in the afternoon. At about 2:00 p.m., when the driver of the Ecco car was passing the place of the accident, i.e., the road heading towards Sindhrot from Bhimpura Three Road in the sim of Bhimpura village, he was driving at a slow speed, on the correct side of the road, and in compliance with traffic rules. At that time, opponent No.1, the driver of the truck bearing registration No. GJT-5269, came from the opposite direction at full speed, driving in the wrong direction and in a rash and negligent manner, and dashed the Ecco car. As a result, the applicant sustained injuries on the left rib, neck, and other parts of the body, and in the said accident, the driver and two other girls died, and two girls sustained injuries.

(8.5) After the accident, the applicant was first taken to Sterling Hospital for treatment and was admitted as an indoor patient. X-ray, CT scan, and other tests were carried out, in which fracture of the left rib and fracture in the neck (C-7) were detected. A rod was inserted in the right leg of the applicant during surgery. The applicant was discharged on 23/01/2018 with advice to take rest for 12 weeks, and thereafter on 02/02/2018. The applicant incurred medical expenses to the tune of Rs. 75,000/-. The FIR was lodged against the driver of the truck, i.e., opponent No.1.

(8.6) At the time of the accident, the applicant was serving as a Professor at Karamsad Medical College, Karamsad, and was earning a salary of Rs. 45,000/- per month. Thus, with the aforesaid contentions, the present claim petition has been filed.

(In M.A.C.P Case No. 135/2018- DEATH / FATAL)

(8.7) It is the case of the claimants that on 20/01/2018, the deceased, Maitriben Satishbhai Rajput, daughter of the applicants, left for Vadodara from Karamsad Medical College, Karamsad, with her friends in an Ecco car bearing registration No. GJ-06-KP-1407. At about 2:00 p.m., when the driver of the Ecco car was passing the place of the accident— the road heading towards Sindhrot from Bhimpura Three Road, in the sim (outskirt) of Bhimpura village, he was driving at a slow speed, on the correct side of the road, and in compliance with traffic rules. At that time, opponent No. 1, the driver of the truck bearing registration No. GTJ - 5269, came from the opposite direction, driving at full speed, in the wrong direction, and in a rash and negligent manner, and dashed into the Ecco car. As a result, the deceased sustained injuries and died due to the injuries suffered in the accident. An F.I.R. was lodged against the driver of the truck, i.e. , opponent No. 1. The deceased, Maitriben Satishbhai Rajput, was 22 years old at the time of the accident and was studying physiotherapy (4th year) at M.K. Patel Institute of Physiotherapy College, Karamsad.

(In M.A.C.P Case No. 136/2018 - INJURED)

(8.8) It has been the case of the claimant that on 20/01/2018, the applicant left for Vadodara from Karamsad Medical College, Karamsad, with her friends in an Ecco car bearing registration No. GJ-06-KP-1407 in the afternoon. At about 2:00 p.m., when the driver of the Ecco car was passing the place of the accident, i.e., the road heading towards Sindhrot from Bhimpura Three Road in the sim (outskirt) of Bhimpura village, at a slow speed and on the correct side of the road while obeying traffic rules, the opponent No. 1- driver of the truck bearing registration No. GTJ- 5269 came from the opposite direction at full speed, on the wrong side of the road, and in a rash and negligent manner, and dashed into the Ecco car. As a result of the said accident, the applicant sustained serious injuries on the waist,right leg and face and fractures on the right leg at M-3 and L-3 of the shaft femur, injuries on the face, eyes and waist, injuries to the right lung, and other bodily injuries. In the said accident, two girls died and two girls sustained injuries.

(8.9) That after the accident, the applicant was first taken to Sterling Hospital for treatment and was admitted as an indoor patient. X-ray, CT scan and other diagnostic tests were conducted, and the medical reports revealed a fracture of the pubic rami on the waist, and fractures at M-3 and L-3 of the shaft femur of the right leg. The applicant was admitted to the ICU, and a plate was inserted by performing an operation, along with other necessary treatments. Thereafter, the applicant was shifted from Sterling Hospital to Navjivan Hospital on 02/02/2018 and was again admitted as an indoor patient. The applicant was discharged from Navjivan Hospital on 10/02/2018 with advice to take rest. The applicant incurred medical expenses to the tune of Rs. 12,00,000/-. An FIR was lodged against the driver of the truck, i.e., opponent No. 1.

That at the time of the accident, the applicant was studying in the 2nd year of M.B.B.S. at Karamsad College. Thus, with the aforesaid contentions, this claim petition has been filed.

(In M.A.C.P Case No. 137/2018- DEATH / FATAL)

(8.10) It is the case of the claimants that on 20/01/2018, the deceased, Hemrajbhai Virsangbhai Chaudhary, the husband of applicant No.1 and father of applicant No.2, left for Vadodara from Karamsad Medical College, Karamsad, by driving an Ecco car bearing registration No. GJ-06-KP-1407 in the afternoon, along with girl students studying at the said college. At about 2:00 p.m., when he was passing through the place of the accident, i.e., the road heading towards Sindhrot from Bhimpura Three Road in the sim (outskirt) of Bhimpura village, he was driving the Ecco car at a slow speed, on the correct side of the road, and in compliance with traffic rules. At that time, opponent No.1, the driver of the truck bearing registration No. GTJ - 5269, came from the opposite direction on the wrong side, at full speed, in a rash and negligent manner, and dashed into the Ecco car. As a result, the deceased sustained injuries and died on the spot due to the injuries sustained in the accident. An FIR was lodged against the driver of the truck, i.e., opponent No.1.

It is further the case of the claimants that the deceased, Hemrajbhai Virsangbhai Chaudhary, was 43 years old at the time of the accident. He owned two vehicles an Ecco car bearing registration No. GJ-06-KP-1407 and a Tavera car bearing registration No. GJ-02-BD-2978. One of these vehicles was given on rent by the deceased, while the deceased personally drove the other. The deceased also owned agricultural land and had rented out a shop for use as an ATM. Thus, from all these occupations, the deceased was earning Rs. 40,000/- per month at the time of the accident. An FIR was lodged against the driver of the truck, i.e., opponent No.1.

(In M.A.C.P Case No. 138/2018- INJURED)

(8.11) It has been the case of the claimant that on 20/01/2018, the applicant left for Vadodara from Karamsad Medical College, Karamsad with her friends in an Ecco car bearing registration No. GJ-06-KP-1407 in the afternoon. At about 2:00 p.m., when the driver of the Ecco car was passing through the place of accident, i.e., the road heading towards Sindhrot from Bhimpura Three Road in the sim (outskirt) of Bhimpura village, at a slow speed and on the correct side of the road while obeying traffic rules, at that time, opponent No.1, the driver of the truck bearing registration No. GTJ- 5269, came from the opposite direction at full speed, on the wrong side, and in a rash and negligent manner, and dashed into the Ecco car. As a result, the applicant sustained injuries on her right leg, left hand, and other parts of the body, and two other girls died while two girls sustained injuries in the said accident.

After the accident, the applicant was first taken to Sterling Hospital for treatment and admitted as an indoor patient. X-ray, CT scan, and other medical tests were carried out, in which a fracture of the right tibia-fibula (M-3) and a fracture of the left clavicle were found. Therefore, a plate was inserted in the left clavicle by performing an operation, and a rod was inserted in the right leg. The applicant also sustained serious injuries on the head. The applicant was discharged on 25/01/2018. She incurred medical expenses to the tune of Rs. 3,00,000/-. An FIR was filed against the driver of the truck, i.e., opponent No.1.

At the time of the accident, the applicant was studying Physiotherapy (3rd Year) in M.K. Patel Institute of Physiotherapy College, Karamsad. Thus, with the aforesaid contentions, the present claim petition has been filed.

(9) The notices issued upon the opponents came to be served upon them. Nobody has appeared on behalf of opponents No. (1), (2), and (4) in all the M.A.C.P. proceedings.

On behalf of opponent No. (3), Ld. Advocate Mr. Kamlesh Patel has appeared in all the petitions and has filed written statements at Exh. - 23 in M.A.C.P. No. 133/2018, at Exh. - 21 in M.A.C.P. No. 134/2018, at Exh. - 19 in M.A.C.P. No. 135/2018, at Exh. - 20 in M.A.C.P. No. 136/2018, at Exh. - 13 in M.A.C.P. No. 137/2018, and at Exh. - 21 in M.A.C.P. No. 138/2018, wherein the facts narrated in all the claim petitions have been denied and various other contentions have been raised.

On behalf of opponent No. (5), Ld. Advocate Mrs. Manjuben Kella has appeared in all the petitions and has filed written statements at Exh. - 19 in M.A.C.P. No. 133/2018, at Exh. - 19 in M.A.C.P. No. 134/2018, at Exh. - 16 in M.A.C.P. No. 135/2018, at Exh. - 18 in M.A.C.P. No. 136/2018, and at Exh. - 18 in M.A.C.P. No. 138/2018, wherein the facts narrated in all the claim petitions have been denied and various other contentions have been raised. The right of opponent No. (5) in M.A.C.P. No. 137/2018 to file a reply has been closed by this Court as per Rojkam dated 07/08/2018.

(10) On the basis of the pleadings of the parties, my Ld. Predecessor has framed the following issues.

(10.1) <u>M.A.C.P. No. 133/2018 (Ex.17)</u>

1. Whether it is proved that the claimant sustained injuries on account of rashness or negligence in driving on the part of driver of the vehicles involved in the accident ?
2. What amount, if any, the applicant is entitled to by way of compensation and from which of the opponents ?
3. What order ?

(10.2) My findings on the above issues are as under for the reasons assigned hereinafter.

1. The accident had taken place due to negligence on the part of the driver of the truck no. GTJ – 5269 i.e <u>opponent No. (1).</u>
2. As per final order.
3. As per final order.

<u>(10.3)</u> <u>M.A.C.P. No.134/2018 (Ex.17)</u>

(1) Whether it is proved that the claimant sustained injuries on account of rashness or negligence in driving on the part of driver of the vehicles involved in the accident ?

(2) What amount, if any, the applicant is entitled to by way of compensation and from which of the opponents ?

(3) What order ?

(10.4) My findings on the above issues are as under for the reasons assigned hereinafter.

1. The accident had taken place due to negligence on the part of the driver of the truck no. GTJ – 5269 i.e <u>opponent No. (1).</u>
2. As per final order.
3. As per final order.

(10.5) <u>M.A.C.P. No. 135/2018 (Ex.14)</u>

(1) Whether it is proved that the claimant sustained injuries on account of rashness or negligence in driving on the part of driver of the vehicles involved in the accident ?

(2) What amount, if any, the applicant is entitled to by way of compensation and from which of the opponents ?

(3) What order ?

(10.6) My findings on the above issues are as under for the reasons assigned hereinafter.

1. The accident had taken place due to negligence on the part of the driver of the truck no. GTJ – 5269 i.e <u>opponent No. (1).</u>
2. As per final order.

3. As per final order.

(10.7) **M.A.C.P. No. 136/2018 (Ex.16)**

(1) Whether it is proved that the claimant sustained injuries on account of rashness or negligence in driving on the part of driver of the vehicles involved in the accident ?

(2) What amount, if any, the applicant is entitled to by way of compensation and from which of the opponents ?

(3) What order ?

(10.8) My findings on the above issues are as under for the reasons assigned hereinafter.

1. The accident had taken place due to negligence on the part of the driver of the truck no. GTJ – 5269 i.e opponent No. (1).
2. As per final order.
3. As per final order.

(10.9) **M.A.C.P. No. 137/2018 (Ex.11)**

1. Whether it is proved that the deceased sustained injuries and died on account of rashness or negligence in driving on the part of driver of the vehicle involved in the accident ?
2. What amount, if any, the applicants are entitled to by way of compensation and from which of the opponents ?
3. What order ?

(10.10) My findings on the above issues are as under for the reasons assigned hereinafter.

1. The accident had taken place due to negligence on the part of the driver of the truck no. GTJ – 5269 i.e opponent No. (1).
2. As per final order.
3. As per final order.

(10.11) **M.A.C.P. No. 138/2018 (Ex.16)**

1. Whether it is proved that the deceased sustained injuries and died on account of rashness or negligence in driving on the part of driver of the vehicle involved in the accident ?
2. What amount, if any, the applicants are entitled to by way of compensation and from which of the opponents ?
3. What order ?

(10.10) My findings on the above issues are as under for the reasons assigned hereinafter.

1. The accident had taken place due to negligence on the part of the driver of the truck no. GTJ – 5269 i.e opponent No. (1).
2. As per final order.
3. As per final order.

(11) The claimants have produced the following oral as well as documentary evidence to establish their claims.

ORAL EVIDENCE :

Exh.21	Deposition of claimant : Sakshi Girishbhai Masand (In M.A.C.P no. 133/2018)
Exh.37	Deposition of claimant : Tanviben Pratikbhai Dalvi (In M.A.C.P No. 134/2018)
Exh.17	Deposition of claimant No.1 : Satishbhai Hasmukhbhai Rajput (In M.A.C.P no. 135/2018)
Exh.29	Deposition of claimant : Palak Mukeshbhai Shah (In M.A.C.P no. 136/2018)
Exh.42	Deposition of Claimant No.1: Pina @ Pinalben Hemrajbhai Chaudhary (In M.A.C.P No. 137/2018)
Exh.19	Deposition of Claimant : Drashti Ashokbhai Patel (In M.A.C.P No. 138/2018)
Exh.110	Deposition of witness Mukeshbhai Baldevbhai Shrimali (In M.A.C.P No. 133 to 135/2018)
Exh.120	Deposition of witness Mukeshbhai Baldevbhai Shrimali (In M.A.C.P No. 133 to 135/2018)
Exh.136	Deposition of witness Bharatkumar Kumudchandra Vyas (In M.A.C.P No. 133 to 135/2018)
Exh.143	Deposition of witness Dr. Tushar P. Modi (In M.A.C.P No. 133 to 135/2018)
Exh.151	Deposition of the witness Dharmesh Devilal Patidar (In M.A.C.P No. 133 to 135/2018)

DOCUMENTARY EVIDENCE :

M.A.C.P NO. 133/2018	
Exh.43	Certified copy of F.I.R No. I - 5/2018 registered before Taluka Police Station, Vadodara
Exh.44	Certified Copy of Panchnama of the place of accident
Exh.45	Copy of R.C.Book of truck bearing registration No. GTJ-5269
Exh.46	Copy of Insurance policy of truck bearing registration No. GTJ-5269
Exh.47	Copy of R.C. Book of Ecco car bearing registration No. GJ-06-KP-1407
Exh.48	Copy of Insurance Police of Ecco car bearing registration No. GJ-06-KP-1407
Exh.49	Certified copy of the chargesheet (against the Truck Driver of GTJ – 5269)
Exh.50	Copy of the Injury Certificate issued by the Sterling Hospital to the applicant
Exh.51	Copy of the Aadhar Card of the applicant
Exh.52	Copy of S.S.C Marksheet of the applicant
Exh.53	Copy of H.S.C Marksheet of the applicant
Exh.54	Copy of Marksheet of the applicant of 1st year Physiotherapy
Exh..55	Copy of Marksheet of the applicant of 2nd year Physiotherapy
Exh.56	Copy of Marksheet of the applicant of 3rd year Physiotherapy
Exh.57	Copy of Marksheet of the applicant of 4th year Physiotherapy.
Exh.58	Copy of the Certificate issued from the College to the applicant

Exh.59	Copy of Degree Certificate of the applicant
Exh.60	Copy of the certificate regarding passing in first attempt
Exh.61	Copy of Completion Certificate in internship
Exh.62	Mediclaim bill of the applicant with settlement letter of Rs. 3,82,427/-
Exh.63	Mediclaim bill of the applicant with settlement letter of Rs. 44,918/-
Exh.111	Certified Copy of the discharge summary of the applicant Masand Sankshi Girish **(Mark 109/1)**
Exh.112	Certified Copy of Bill of Rs. 3,82,427/- of the applicant Masand Sankshi Girish **(Mark 109/2)**
Exh.168	Copy of the police papers (**Mark 166/1)**
Exh.171	Certified copy of the policy (Eco Car) **(Mark 170/1)**
Exh.172	Certificate issued from R.T.O to Vehicle No. GJ-6-KP-1407 **(Mark 170/2)**
Exh.153	Medical Bills of Rs. 61,967/- issued from Sterling Hospital
Exh.152	Certified Copy of discharge summary
Exh.144	Disability Certificate
M.A.C.P NO. 134/2018	
Exh.64	Copy of Injury Certificate issued to the applicant from Sterling Hospital.
Exh.65	Copy of discharge summary issued to the applicant from Sterling Hospital.
Exh.66	Copy of Mediclaim Bill of Rs. 67,798/- issued from Sterling Hospital regarding expenses of medical treatment
Exh.67	Copy of the aadhar card of the applicant

Exh. 113	Certified Copy of the discharge summary of the applicant (**Mark 109/3)**
Exh. 114	Certified Copy of the Bill summary of Rs. 67,798/- of the applicant **(Mark 109/4)**
Exh. 138	Copy of the status report of the Dr. Tanvi Dalvi from 21/10/2016 till date (**Mark 137/1)**
Exh. 139	Certificate regarding payment of salary to Dr. Tanvi Dalvi for the month of November-2017, December-2017 and January-2017(**Mark 137/2)**
Exh. 140	Certificate of Dr. Tanvi Dalvi for leave from the duty from 22/01/2018 to 01/04/2018) (**Mark 137/3)**
Exh. 145	Copy of Disability Certificate.
M.A.C.P NO. 135/2018	
Exh.68	Certified Copy of Inquest Panchnama of the deceased Maitriben Rajput
Exh.69	Copy of the P.M. Note of the deceased Maitriben Rajput
Exh.70	Copy of the Aadhar card of the deceased Maitriben Rajput
Exh.71	Copy of the School Leaving Certificate of the deceased Maitriben Rajput
Exh.72	Copy of the marksheet of Gujcet of the deceased Maitriben Rajput
Exh.73	Copy of the marksheet of the deceased Maitriben Rajput of first year physiotherapy.
Exh.74	Copy of the marksheet of the deceased Maitriben Rajput of second year physiotherapy.
Exh.75	Copy of the marksheet of the deceased Maitriben Rajput of third year physiotherapy.
Exh.76	Copy of Certificate of honour issued by National Service Scheme to the deceased Maitriben Rajput

Exh.77	Copy of the appreciation certificate issued from K.M.Patel Institute to the deceased Maitriben Rajput
Exh.78	Copy of the acknowledgment slip issued to the deceased Maitriben Rajput from Medical Board (2014-2015)
Exh.79	Copy of Admission order of the deceased Maitriben Rajput
M.A.C.P NO. 136/2018	
Exh.80	Original certificate issued from Sterling Hospital to the applicant
Exh.81	Copy of Medical Certificate/ Treatment Certificate issued from the Sterling Hospital to the applicant
Exh.82	Original discharge summary (Page-7) issued from Sterling Hospital to the applicant
Exh.83	Original discharge summary issued to the applicant from Navjeevan Hospital
Exh.84	Original discharge summary issued to the applicant from the Hospital of Dr. Anupam Desai
Exh.85	Original discharge summary issued to the applicant from Brijmani Orthopedic Hospital
Exh.86	Copy of the aadhar card of the applicant
Exh.87	Copy of the S.S.C Marksheet of the applicant
Exh.88	Copy of the H.S.C Marksheet of the applicant
Exh.89	Copy of the marksheet of the applicant for the first year M.B.B.S
Exh.90	Copy of the marksheet of the applicant for the Second year M.B.B.S
Exh.121	Certified copy of the discharge summary issued to the applicant from Sterling Hospital. (**Mark 119/1)**
Exh.122	Certified Copy of the medical bill of Rs. 6,25,000/- issued from Sterling Hospital.(**mark 119/2)**

Exh.154	Rest Certificate issued to the applicant from Sterling Hospital **(Mark 26/55)**
Exh.146	Original Disability Certificate
M.A.C.P NO. 137/2018	
Exh.91	Certified copy of the Inquest Panchnama of the deceased Hemrajbhai Chaudhary
Exh.92	Copy of the P.M.Note of the deceased Hemrajbhai Chaudhary
Exh.93	Copy of the driving license of the deceased Hemrajbhai
Exh.94	Certified copy of the death certificate of the Hemrajbhai
Exh.95	Original abstract of the village form No. 7/12 and 8-A of the agriculture land of the deceased Hemrajbhai
Exh.96	Copy of the R.C.Book and Insurance police of Ecco Car bearing registration No. GJ-06-KP-1407 of the deceased
Exh.97	Copy of the Insurance policy of the tavera car bearing registration No. GJ-02-BD-2978 of the deceased
Exh.98	Copy of pedigree of the deceased Hemrajbhai
M.A.C.P NO. 138/2018	
Exh.99	Copy of the injury certificate issued from the Sterling Hospital to the applicant
Exh.100	Original discharge summary issued to the applicant from Sterling Hospital
Exh.101 & 102	Copy of the X-ray report of the right leg of the applicant
Exh.103	Copy of the X-ray Report of Chest and right shoulder of the applicant
Exh.104	Copy of the aadhar card of the applicant

Exh. 105	Copies of the certificates of the applicant issued by Sardar Patel University (2016 to 2019)
Exh.115	Certified Copy of the discharge Summary of the applicant (**Mark 109/5)**
Exh.116	Certified Copy of Bill Summary of the applicant of Rs. 2,72,579/-,(**Mark 109/6)**
Exh.147	Disability Certificate
Exh.155	Rest Certificate issued from the Sterling Hospital

(12) Ld. Advocate for the claimant has placed on record the closing pursis at Ex. - 156. Ld. Advocate for opponent No. (3) has placed on record the closing pursis at Ex. - 163 in M.A.C.P. No. 133/2018, and Ld. Advocate for opponent No. (5) has placed on record the closing pursis at Ex. - 173 in M.A.C.P. No. 133/2018. This Tribunal has considered the closing pursis placed by the learned advocates for the parties as common in all the remaining petitions.

(13) Ld. Advocate for the applicant has placed on record written submissions at Exh.- 175, Exh.- 22, Exh.- 20, Exh.- 21, Exh.- 19 and Exh.- 22 respectively in M.A.C.P No. 133/2018 to 138/2018 respectively. These submissions are available in written form on the record, therefore, I will not repeat them here. However, I have carefully gone through and taken them into consideration while deciding these petitions on merit.

Ld. Advocate Mr. Kamlesh Patel for the opponent NO. (3) - MAGMA HDI General Insurance Co. Ltd. has placed on record written submissions at Exh. - 182 and Exh. - 183 which are available on record in written form, therefore, I will not repeat them here. However, I have carefully perused them and taken them into consideration while deciding these petitions on merit. Ld. Advocate has relied upon the decision of the Hon'ble Gauhati High Court, in the case of **Oriental Insurance Co. Vs. Chamapbati Ray and others (2020) 6, reported in LR 521.**

Ld. Advocate Mrs. Manjuben Kella for the opponent No. (5), The New India Insurance Company has placed on record written submissions at Exh. - 184 which are available on record in written form, therefore, I will not repeat them here. However, I have carefully perused them and taken them into consideration while deciding these petitions on merit. In support of her submissions, she has placed on record following decisions.

1. Decision of the Hon'ble Gujarat High Court, rendered iin the case of **Oriental Insurance Co. Ltd. Vs. Ramdas Madanlal Saini and others, reported in 2020 ACJ 742.**

FINDINGS AND REASONS

ISSUE NO. (1) IN ALL THE PETITIONS.

(14) It has been stated in the claim petition M.A.C.P No. 133/2018 that on 20/01/2018, the applicant left for Vadodara from Karamsad Medical College, Karamsad with her friends in Ecco Car bearing registration No. GJ-06-KP-1407 in the afternoon and at 2:00 p.m the driver of the Ecco Car was passing from the place of accident i.e road heading towards Sindhrot from Bhimpura Three Road in the sim (outskirts) of Bhimpura village, at a slower speed and on the correct side of the road by obeying the traffic rules, and at that time, the opponent No.1, driver of the Truck bearing registration No. GTJ- 5269 came driving from the opposite side on wrong direction at full speed and in a rash and negligent manner and collided with the Ecco car. As a result of which, the applicant had sustained the injuries on the hip of right leg, forehead, shoulder, chest and head and also sustained the injuries on the other parts of the body. In the said accident, the driver and two other girls died and two girls sustained injuries.

It has been stated in the claim petition M.A.C.P No. 134/2018 that on 20/01/2018, the applicant left for Vadodara from Karamsad Medical College, Karamsad with her friends in Ecco Car bearing registration No. GJ-06-KP-1407 at afternoon and at 2:00 p.m the driver of the Ecco Car was passing from the place of accident i.e road heading towards Sindhrot from Bhimpura Three Road in the sim (outskirt) of Bhimpura village, at slow speed and on correct side of the road by obeying traffic rules at that time, the opponent No.1, driver of the Truck bearing registration No. GTJ-5269 came driving it from opposite side on wring direction at full speed and in rash and negligent manner and dashed it with the Ecco car, as a result of which, the applicant had sustained injuries in left rib, neck and also sustained injuries on other parts of the body in the said accident and driver and other two girls died and two girls sustained injuries.

It has been stated in the claim petition M.A.C.P. No. 135/2018 that on 20/01/2018, the deceased, Maitriben Satishbhai Rajput, daughter of the applicants, left for Vadodara from Karamsad Medical College, Karamsad, with her friends in an Ecco car bearing registration No. GJ-06-KP-1407. At about 2:00 p.m., when the driver of the Ecco car was passing the place of the accident i.e., the road heading towards Sindhrot from Bhimpura Three Road in the sim of Bhimpura village—he was driving at a slow speed, on the correct side of the road, and in compliance with traffic rules. At that time, opponent No. 1, the driver of the truck bearing registration No. GTJ - 5269, came from the opposite direction, driving at full speed, in the wrong direction, and in a rash and negligent manner, and dashed into the Ecco car. As a result, the deceased sustained injuries and died due to the injuries suffered in the accident. An F.I.R. was lodged against the driver of the truck, i.e., opponent No. 1. The deceased, Maitriben Satishbhai Rajput, was 22 years old at the time of the accident and was studying physiotherapy (4th year) at M.K. Patel Institute of Physiotherapy College, Karamsad.

It has been stated in the claim petition M.A.C.P. No. 136/2018 that on 20/01/2018, the applicant left for Vadodara from Karamsad Medical College, Karamsad, with her friends in an Ecco car bearing registration No. GJ-06-KP-1407 in the afternoon. At about 2:00 p.m., when the driver of the Ecco car was passing the place of the accident, i.e., the road heading towards Sindhrot from Bhimpura Three Road in the sim(outskirt) of Bhimpura village, at a slow speed and on the correct side of the road while obeying traffic rules, opponent No. 1, the driver of the truck bearing registration No. GTJ- 5269, came from the opposite direction on the wrong side of the road at full speed and in a rash and negligent manner, and dashed into the Ecco car. As a result of the said accident, the applicant sustained a *pubic rami* fracture on the waist, fractures at M-3 and L-3 of the shaft femur of the right leg, injuries on the face, eyes and waist, injuries to the right lung, and other bodily injuries. In the said accident, two girls died and two girls sustained injuries.

It has been stated in the claim petition, M.A.C.P. No. 137/2018, that on 20/01/2018, the deceased, Hemrajbhai Virsangbhai Chaudhary, the husband of applicant No.1 and father of applicant No.2, left for Vadodara from Karamsad Medical College, Karamsad, by driving an Ecco car bearing registration No. GJ-06-KP-1407 in the afternoon, along with girl students studying in the said college. At about 2:00 p.m., while he was passing through the place of the accident, i.e., the road heading towards Sindhrot from Bhimpura Three Road in the sim(outskirt) of Bhimpura village, he was driving the Ecco car at a slow speed, on the correct side of the road, and in compliance with traffic rules. At that time, opponent No.1, the driver of the truck bearing registration No. GTJ- 5269, came from the opposite direction on the wrong side, at full speed, in a rash and negligent manner, and dashed into the Ecco car. As a result, the deceased sustained injuries and died on the spot due to the injuries sustained in the accident.

It has been stated in the claim petition, M.A.C.P. No. 138/2018, that on 20/01/2018, the applicant left for Vadodara from Karamsad Medical College, Karamsad with her friends in an Ecco car bearing registration No. GJ-06-KP-1407 in the afternoon. At about 2:00 p.m., when the driver of the Ecco car was passing through the place of the accident, i.e., the road heading towards

Sindhrot from Bhimpura Three Road in the sim (outskirt) of Bhimpura village, at a slow speed and on the correct side of the road while obeying traffic rules, at that time, opponent No.1, the driver of the truck bearing registration No. GTJ-5269, came from the opposite direction on the wrong side, at full speed, in a rash and negligent manner, and dashed into the Ecco car. As a result, the applicant sustained injuries on her right leg, left hand, and other parts of the body in the said accident, and two other girls died while two girls sustained injuries.

The aforesaid facts have been reiterated in the affidavit of the applicant in M.A.C.P. No. 133/2018 at Exh.- 21 ; at Exh.- 37 in the affidavit of the applicant in M.A.C.P. No. 134/2018 ; at Exh.- 17 in the affidavit of applicant No. 1 in M.A.C.P. No. 135/2018 ; at Exh.- 29 in the affidavit of the applicant in M.A.C.P. No. 136/2018 ; at Exh.- 42 in the affidavit of applicant No. 1 in M.A.C.P. No. 137/2018 ; and at Exh.- 19 in the affidavit of the applicant in M.A.C.P. No. 138/2018.

(15) The applicant of M.A.C.P No. 133/2018 was cross examined by the Ld. Advocate Mr. K.A. Patel appearing for opponent No.3, wherein, she admitted that at the time of the incident, she was traveling in the Ecco Car and was seated in the back seat of the car. She denied the suggestion that a vehicle approaching from the front side could not be seen from the place where she was seated. She further admitted that the vehicle coming from the opposite direction was traveling towards Bhimpura from Vadodara and that both the vehicles collided from the opposite direction. She has also admitted that the accident had taken place on the middle of road and at the time of the accident, total nine passengers were traveling in the said car. The applicant was further cross examined by Ld. Advocate Mrs. Manju Kella for the opponent No.5, insurance co. wherein, she has admitted during the cross-examination that she was doing up and down daily in the Ecco Car and she did not know if the Ecco car was going slowly because she was asleep at the time. She has further stated that the accident had taken place due to the truck driver's negligence, as she was told by people.

The applicant of M.A.C.P. No. 134/2018 was cross-examined by Ld. Advocate Mr. K.A. Patel for opponent No. 3, wherein she stated that she was seated on the back left side of the Ecco car. She admitted that from the place where she was seated, the vehicle coming from the opposite direction could not be seen clearly. She admitted that their vehicle was going towards Vadodara from Bhimpura and that the opposite vehicle came towards Bhimpura from Vadodara. She further admitted that the Ecco car and the truck collided from opposite directions and that the accident had taken place in the middle of the road. She also admitted that she did not know whether the driver of her car had taken the vehicle to the left side after seeing the truck. She further admitted that there were a total of nine passengers traveling in the Ecco car. She admitted that the balance of the car was not maintained as the entire car was full.

The applicant was further cross-examined by Ld. Advocate Mrs. Manju Kella for opponent No. 5, wherein she admitted that the accident had taken place on 20/01/2018. She further admitted that a total of seven to eight girls were traveling in the Ecco car from

Baroda to Karamsad. She stated that she does not remember the registration number of the Ecco car. She admitted that the Ecco car was going at a slow speed and on the correct side of the road. She further admitted that the truck dashed into their car due to the negligent driving of the truck driver.

The applicant No. 1 of M.A.C.P. No. 135/2018 was cross-examined by Ld. Advocate Mr. Kamlesh Patel for opponent No. 3, wherein he admitted that he had not seen the accident and had no information regarding the accident.

The applicant of M.A.C.P. No. 136/2018 has been cross-examined by learned Advocate Mr. Kamlesh Patel for opponent No. 3, wherein she stated that at the time of the incident, she was travelling in the Ecco car and was sitting in the back side of the car, where two seats were placed in the opposite direction. She denied the suggestion that the vehicle coming from the opposite direction could not be seen from where she was seated. She admitted that her vehicle was going towards Vadodara from Bhimpura and the opposite vehicle was going towards Bhimpura from Vadodara. She further admitted that the Ecco car and the truck collided from the opposite directions and that the accident took place in the middle of the road. She further stated that she does not have knowledge whether the driver of her car applied brakes when he saw the truck and took the car to the side. She further stated that their vehicle was on the correct side of the road. She admitted that at the time of the accident, there were nine persons in the car including the driver. She denied that the accident occurred due to overloading of passengers, causing the driver to lose control of the vehicle.

This witness was also cross-examined by learned Advocate Mrs. Manju Kella for opponent No. 5. She admitted that she used to commute daily in the Ecco car and denied that she had paid rent on the day of the accident. She admitted that the driver of the Ecco car died in the accident. She stated that she does not know whether the Ecco car was running on CNG or LPG. She admitted that the Ecco car was going at a slow speed and on the correct side of the road. She also admitted that the accident took place due to the negligence of the driver of the truck.

The applicant No. 1 in M.A.C.P. No. 137/2018 has been cross-examined by learned Advocate Mr. Kamlesh Patel for opponent No. 3, wherein he admitted that he had not witnessed the accident and had no information regarding the manner in which the accident occurred. It Is true that there are no bills for the expenses mentioned under various heads in affidavit. It is true that no evidence has been presented to show the income of her deceased husband. She is getting the income from the agricultural land of his deceased husband.

The applicant of M.A.C.P. No. 138/2018 has been cross-examined by Ld. Advocate Mr. Kamlesh Patel for opponent No.3, wherein she has stated that at the time of the incident, she was travelling in the Ecco car and she was sitting in the back side of the car, where two seats were placed in opposite directions. She denied the suggestion that the vehicle coming from the opposite direction could not be seen from where she was sitting. She admitted that her vehicle was going towards Vadodara from Bhimpura and the opposite vehicle was going towards Bhimpura from Vadodara. She further admitted that the Ecco car and the truck collided from the opposite directions and that the accident had taken place in the middle of the road. She further stated that she had no knowledge whether the driver of her car applied brakes when he saw the vehicle coming from the opposite side or whether he took the car to the side. She further stated that her vehicle was on the correct side of the road. She also admitted that at the time of the accident, there were 9 persons in the car, including the driver. She denied the suggestion that the accident had taken place due to overloading of passengers and that the driver had lost control of the vehicle on account of the same.

This witness has also been cross-examined by Ld. Advocate Mrs. Manju Kella for opponent No. 5. She admitted that she used to travel daily in the Ecco car and denied that on the day of the accident, she had paid rent for the journey. She admitted that the driver of the Ecco car died in the accident. She stated that she did not know whether the Ecco car was running on CNG or LPG. She admitted that the Ecco car was going at a slow speed and on the correct side of the road. She admitted that the accident had taken place due to the negligence of the driver of the truck.

(16) The F.I.R. came to be lodged against the driver of the truck, i.e., opponent No. 1, and at the end of the investigation, a charge sheet was filed against him. The driver of the truck has not come forward to give his evidence, and therefore, an adverse inference can be drawn against him. Having regard to the aforesaid facts and the manner in which the accident took place, I hold that the accident occurred due to the negligence of the driver of the truck. The deceased sustained serious injuries in the accident and died; therefore, I answer Issue No. 1 in the affirmative.

The entire car was damaged in the said accident. The car sustained damage amounting to Rs. 3,00,000/-. The factum of the accident is corroborated by the F.I.R. and the Panchnama. It further appears from the aforesaid documentary evidence that the deceased in M.A.C.P. No. 135/2018 and M.A.C.P. No. 137/2018 had sustained injuries in the accident and died on account of those injuries. It appears that the driver of the truck, i.e., opponent No. 1, was driving in a rash and negligent manner and collided with the Ecco car bearing registration No. GJ-06-KP-1407, due to which some of the travelers sustained injuries and some died.

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

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

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

Recently the Honb'le Supreme court has held in the case of, ***ICICI Lombard General Ins. Vs. Rajani Sahoo and Ors.*** *that*

" (8) It is true that the Tribunal had looked into the oral and documentary evidence including the F.I.R., final report and such other documents prepared by the police in connection with the accident in question. The Tribunal had also taken note of the fact that based on the final report, the driver of the offending truck was tried and found guilty of rash and ***v. Mohammed Shafi, (2023) 13 SCC 510 appeal. In the contextual situation it is relevant to refer to a decis*** *negligent driving. The High Court took note of such aspects and found no illegality in the procedure adopted by the Tribunal and consequently dismissed the driving. The High Court took note of such aspects and found no illegality this court in Mathew Alexander ion of in which it was held thus:*

"(12) ...A holistic view of the evidence has to be taken into consideration by the Tribunal and strict proof of an accident caused by a particular vehicle in a particular manner need not be established by the claimants on the touchstone of ponderance of probabilities. The standard of proof beyond reasonable doubt cannot be applied while considering the petition seeking comp compensation on account of death or injury in a road traffic accident. To the same effect is the observation made by this court in Dulcina Fernandes v. Joaquim Xavier Cruz, 2013 ACJ 2712 (SC), which has referred to the aforesaid judgment in Bimla Devi, 2009 ACJ 1725 (SC)."

09. Thus, there can be no dispute with respect to the position that the question regarding negligence which is essential for passing an award in a motor vehicle accident claim should be considered *based on the evidence available before the Tribunal. If the police records are available before the Tribunal, taking note of the purpose of the Act it cannot be said that looking into such documents for the aforesaid purpose is impermissible or inadmissible."*

Furter, recently the Honb'le Supre Court has held in the case of <u>Prabhavathi versus M.D., Banglore Metropolitan Trans. Corpn, ACJ 2025 page 533</u> that,

" 11. Thus, in our considered view, contributory negligence taken by the High Court at 25 per cent of the deceased is erroneous. We advert to the principles laid down in Jiju Kuruvila v. Kunjujamma Mohan, 2013 ACJ 2141 (SC) where it was held that in the absence of any direct or corroborative evidence on record, it cannot be assumed that the accident occurred due to rash and negligent driving of both the vehicles. This exposition came to be followed in Kiran v. Sajjan Singh, 2014 ACJ 2550 (SC). In the present case, therefore, on an allegation simpliciter, it cannot be presumed that the accident occurred due to rash and negligent driving of both vehicles, for having driven at high speed.

13. It is the settled law that under the Motor Vehicles Act, 1988 it is established that in compensation cases, the strict rules of evidence used in criminal trials do not apply. Instead, the standard of proof is based on the preponderance of probability. This court in Sunita v. Rajasthan State Road Transport Corporation, 2019 ACJ 801 (SC), observed that:

"(20) ...It is thus well settled that in motor accident claim cases, once the foundational fact, namely, the actual occurrence of the accident, has been established, then the Tribunal's role would be to calculate the quantum of just compensation if the accident had taken place by reason of negligence of the driver of a motor vehicle and, while doing so, the Tribunal would not be strictly bound by the pleadings of the parties. Notably, while deciding cases arising out of motor vehicle accidents, the standard of proof to be borne in mind must be of preponderance of probability and not the strict standard of proof beyond all reasonable doubt which is followed in criminal cases.

The exposition came to be reiterated in Rajwati v. United India Insurance Co. Ltd., 2022 ACJ 2754 (SC) wherein it was observed that:

"(19) It is well settled that the Motor Vehicles Act, 1988 is a beneficial piece of legislation and as such, while dealing with compensation cases, once the actual occurrence of the accident has been established, the Tribunal's role would be to award just and fair compensation. As held by this court in Sunita (supra) and Kusum Lata (supra), strict rules of evidence as applicable in a criminal trial are not applicable in motor accident compensation cases, i.e., 'the standard of proof to be borne in mind must be of preponderance of probability and not the strict standard of proof beyond all reasonable doubt which is followed in criminal cases. "

In the present petitions, it transpires after perusing the police papers that, the F.I.R. came to be lodged against the driver of the truck, i.e., opponent No. 1, and at the end of the investigation, the charge sheet was filed against him. The The driver of the truck has not come forward to give his evidence, and therefore, an adverse inference can be drawn against him. Having regard to the aforesaid facts and the manner in which the accident took place, **I hold that the accident was caused by the negligence of the driver of the truck, referred to as opponent no. 1. The deceased sustained serious injuries in the accident and subsequently died, while the other passengers also suffered serious injuries in the accident. Therefore, I answer Issue No. 1 in the affirmative.**

(17) Issue No. 2 (In M.A.C.P. No. 133/2018)

(17.1) It has been stated in the claim petition that the applicant sustained injuries to the right hip, forehead, shoulder, chest, head, and other parts of the body. These facts have been reiterated in the affidavit filed by the applicant in the form of examination-in-chief at Ex. 21. The treatment papers placed on record at Ex. 50, Ex. 111, and Ex. 152 corroborate the fact of the injuries.

(17.2) DISABILITY

Ld. Advocate Mr. S. P. Gupta for the applicant has placed on record the written submissions at Exh. 175 and submitted that the applicant suffered 24% permanent disability of the right leg and 5% disfigurement of the face. He has further submitted that the applicant was undergoing an internship after completing his Physiotherapy studies. Thus, the applicant was a medical student, and due to the accident, he has suffered permanent partial disability. He has requested that the permanent partial disability of the body as a whole be considered at 17%.

The disability certificate of the applicant has been placed on record at Ex.144, which shows that the applicant has suffered 5% disability due to disfigurement of the face and 24% disability of the right lower limb.

Dr. Tushar P. Modi has given his deposition at Exh. 144, wherein he deposed that he holds an M.S. degree in Orthopedics and has been practicing privately in Vadodara for the last 31 years. He stated that he examined Dr. Sakshi Girish Masand for the assessment of permanent disability on 20/09/2018. He further deposed that, as per the applicant's version, she had sustained a fracture of the femur on the right leg, fractures of the first and second ribs, and injuries on the face and forehead. For these injuries, the applicant had taken treatment at Sterling Hospital, undergone surgery, and also undergone plastic surgery on the face. A rod was inserted in the femur, and after the surgery, she had taken physiotherapy treatment. He further deposed that, at the time of examination, the applicant had pain in the right leg, difficulty in standing and lifting weight, inability to run, and disfigurement of the face, and that she could not do any heavy work. On examination, it appeared that the femur fracture had united, the limb was shortened by half a centimetre, the muscles of the hip and knee appeared to be weakened, the movement of both joints was restricted, and the facial wounds had healed but the face had become disfigured. Considering all these factors, he assessed the permanent disability as 24% in respect of the right leg and 5% in respect of facial disfigurement, and stated that the assessment was made as per the doctor’s manual. **Therefore, considering the aforesaid aspects, it would be just and proper to assess permanent disability of body as a whole at 17 %. (Half of 24% is 12% plus 5 % of Face i.e. total 17%)**

(17.3) <u>INCOME.</u>

It has been stated in the petition that at the time of the accident, the applicant was doing her internship after completing her Physiotherapy studies at K.M. Patel Institute of Physiotherapy College, Karamsad. The aforesaid facts have been reiterated in the affidavit filed by the applicant at Exh. 21. In her cross-examination, she stated that at the time of the accident she was doing her internship and receiving a stipend. She denied that her studies were spoiled due to the accident. At present, she is in Australia for further studies, and her studies are ongoing. She went to Australia one year after the accident. At the time of the accident, she was doing her internship and receiving a stipend, and even after the accident, her internship continued and she continued to receive the stipend.

Learned Advocate Mr. S.P. Gupta for the applicant has placed on record written submissions at Exh. 175 and submitted that the applicant was a medical student and, after completing the physiotherapy course, was undergoing internship. He submitted that as per the decisions of the Hon’ble Gujarat High Court and the

Hon’ble Supreme Court, the notional income of a medical student is required to be considered higher than that of a normal person. He has relied upon the following decisions in support of his argument.

1. Decision of Hon'ble S.C In case of Yoshodam S. Vs. R.M.Reliance General Insurance Co. Ltd., reported in 2023 A.C.J. 605 (S.C.)
2. Decision of the Hon'ble S.C in case of Ashvinbhai Jayantilal Modi Vs. Ramkaran Ramchandra Sharma and others, C.A 8131/2014 and 8132/2014.
3. Decision of Hon'ble S.C In case of Bishnu Priay Panda Vs. Basanti Manjeri Mohanti and others, reported in 2023 , A.C.H,. 2393 (S.C)

He has stated in written argument that the accident took place in 2018 and that, at the time of the accident, the applicant was studying Physiotherapy. Therefore, the notional income of the applicant may be considered at Rs. 50,000/- per month, considering the above-cited decision of the Honb’le Supreme Court.

In this petition, it is admitted that the, injured applicant has completed her physiotherapy course from the college and at the time of the accident she was doing internship and was getting the stipend for the same. But in India, a Physiotherapy student is *not* considered an MBBS student. Because, MBBS is a medical degree regulated by the National Medical Commission (NMC). Physiotherapy (BPT) is a separate professional course regulated by the National Commission for Allied and Healthcare Professions

(NCAHP) (earlier by respective universities/state councils). MBBS doctors are licensed medical practitioners and can diagnose, prescribe medicines, and perform medical/surgical procedures. Physiotherapists are *allied health professionals*; they can assess and treat musculoskeletal/neurological conditions through physical therapy, but cannot prescribe medicines or perform surgery. Physiotherapy is not equivalent to MBBS. Physiotherapists are not medical practitioners under the Medical Council regulations, though they are recognized as healthcare professionals. This Tribunal may recognize physiotherapy as a medical/health science course, but not equal to MBBS. For notional income assessment, some courts consider physiotherapy students as skilled professionals—but still distinct from MBBS students.

Notional Income for Non-Earner / Student (Physiotherapy)

Courts often assign a *notional income* to students or non-earning claimants to account for their future earning potential. The Honb'le Supreme Court held that a student's notional income should not be equated to that of an unskilled worker. In MACT cases, Indian courts do not have a fixed statutory notional income for a physiotherapy intern. But based on recent High Court and Supreme Court trends, the notional income of a student who has completed BPT and is doing internship is generally taken as ₹15,000 to ₹25,000 per month, and in some cases even higher depending on evidence. A BPT graduate (even during internship) is considered a **skilled health-care professional**. Physiotherapists in private hospitals/clinics typically earn between **₹18,000–₹30,000 p.m.** as freshers. Courts tend to adopt an income slightly lower than a fully-qualified physiotherapist but higher than an unskilled worker.

Therefore, Considering that the applicant had completed BPT (Physiotherapy) and was undergoing internship at the time of the accident, and keeping in view the earning potential of a qualified physiotherapist in the healthcare sector, it would be just and proper to assess her notional income at Rs. 30,000/- per month. **Therefore, considering the year of the accident and the nature of work, it would be just and proper to assess the monthly income of the applicant at Rs. 30,000/- .**

(17.4) **AGE AND MULTIPLIER**

In the array of the petition, the age of the applicant is shown as 22 years. The injury certificate also records the applicant's age as 22 years. As per the Aadhaar Card of the applicant, placed on record at Exh.41, her date of birth is 11/09/1995. Accordingly, the applicant was 22 years, 4 months, and 9 days old at the time of the accident. Therefore, the multiplier of **18** is applicable as per the judgment of the Honb'e Supreme Court in Sarla Verma Vs. Delhi Transport Corporation, 2009(6) SCC 121 .

(17.5) Future Prospect

The another question arise before this Tribunal is that, whether the Applicant is entitled for Future Prospect in the calculation of total compensation or not ? In this regard this Tribunal has considered the ratio laid down by the Honb'le Supreme Court in the case of **Mohd. Sabeer VS. Regional Manager, U.P. State Road Transport Corporation, 2023 ACJ, 1.** And it was observed by the Honb'le Apex Court that,

17. The High Court has not applied the quantum for future prospect in the compensation granted. In its reasoning, the High Court has stated that the Income tax returns relied upon by the Appellant show that despite the injury the Appellant's income had subsequently increased and hence it cannot be said that there is a loss of future earnings.

18. It is a well settled position of law that in cases of permanent disablement caused by a motor accident, the claimant is entitled to not just future loss of income, but also future prospects. It has been reiterated by this Court in multiple instances that "just compensation" must be interpreted in such a manner as to place the claimant in the same position as he was before the accident took place.

19. The accident that caused the injury took place on 12.06.2009. The acknowledgment of both the Income Tax Returns produced by the Appellant show that Tax Returns were till 31.03.2008 and

31.03.2009. Both the Income Tax Returns produced as proof of income were from before the accident took place, and hence the High Court's finding that the income of the Appellant has increased after the disability is incorrect.

20. It is also to be noted that even if the income of the Appellant had increased after the accident, it would not be enough grounds to disable the Appellant from claiming compensation for future prospect as the rise in income may be attributed to multiple other factors.

21. In light of National Insurance Company Limited V. Pranay Sethi and Others, the applicable 40% addition of future prospects will be given as compensation to the Appellant herein.

So, looking to the ratio held by the Honb'le Supreme Court in above mentioned case, the applicant is also entitled for the future prospect in compensation. The income of the applicant is considered as Rs. 30,000/- p.m and as per the judgment of Pranay Sethi , 2017 (16) SCC 680, the applicant is entitled for 40 % addition of future prospects, as her age was 22 years at the time of the accident and she was doing an internship after completing her study. Therefore, the total income of the applicant will be considered as Rs. 30,000/- plus 40 % as future prospect Rs. 12,000/- and total Rs. 42,000/- will be considered for the purpose of calculating the compensation.

(17.6) **<u>FUTURE LOSS OF INCOME</u>**

Thus, the applicant is entitled to get Rs. 42,000/- (30,000/- + 40% future prospect) x 12 x 18 x 17/100 = Rs. 15,42,240/- towards future loss of income.

(17.7) **<u>Actual loss of income.</u>**

Mukeshbhai Baldevbhai Shreemali, who is serving in Sterling Hospital, Vadodara, has been examined at Exh.110. In his deposition, he stated that the applicant, Sakshiben Girishbhai Masand, was admitted in Sterling Hospital. He produced a certified copy of the discharge summary report, as per which Sakshiben was admitted in the hospital on 20/01/2018 and discharged on 02/02/2018. The said document has been exhibited at Exh. 111.

Dharmesh Devilal Pathidar has been examined at Exh. 151. He deposed that he has been serving in Sterling Hospital for the last seven months as an M.R.D. Officer. This witness was shown Mark 26/9, and on perusal of the same, he stated that it is a certified copy of the discharge summary report. As per the report, Sakshiben Girishbhai Masand was admitted in the hospital from 18/12/2019 to 21/12/2019, and the said report has been exhibited at Exh.152.

The copy of the discharge summary issued by Sterling Addlite India Pvt. Ltd., placed on record at Exh. 111, shows that the applicant was admitted in the hospital on 20/01/2018 and discharged on 02/02/2018.

Thus, looking to the nature of injuries, the applicant could not have worked for three months. **Therefore, she is entitled to Rs. 30,000/- × 3 = Rs. 90,000/- towards actual loss of income.**

(17.8) <u>MEDICAL EXPENSES</u>

Ld. Advocate for the applicant has submitted that the medical bill of Rs. 4,89,196/- is produced and out which the applicant had received Rs. 3,15,789/- from the mediclaim.

It has been stated in the claim petition that the applicant incurred medical expenses to the tune of Rs. 4,00,000/-. It has been stated in the affidavit of the applicant filed in the form of examination-in-chief at Exh. 21 that the applicant had incurred medical expenses to the tune of Rs. 4,50,000/-.

The Medi claim bill of the applicant with settlement letter of Rs. 3,82,427/- out of which the applicant has received Rs. 3,15,789/- from the New India Assurance Company has been placed on record at Exh.62 (For the period of 20/01/2018 to 27/01/2018). The Medi claim bill of the applicant with settlement letter of Rs. 44,918/- out of which the applicant has received Rs. 36,957/- from the New India Assurance Company has been placed on record at Exh. 63. (For the period of 13/04/2018 to 15/04/2018). The Medical bill amounting Rs. 61,967/- of the applicant issued from Sterling Hospital for the period from 18/12/2019 to 21/12/2019 has been placed on record at Exh.153. Thus, in all the applicant had incurred **Rs. 4,89,312/- towards medical expenses** due to the injuries sustained in the accident.

Mukeshbhai Baldevbhai Shreemali, an employee at Sterling Hospital, Vadodara, and a witness for the applicant has been examined and in his deposition he has stated that he brought with summary of medical bill of Sakshi Girishbhai Masan, which is produced at Mark 109/2, wherein, the medical bill expenses shown to be Rs. 3,82,427/-. The applicant was having medi claim policy and from the medi claim policy, the hospital had received Rs. 3,15,789/- towards medical expenses and remaining amount had been paid by the applicant. The said bill is exhibited at Exh. 112.

Dharmesh Devilal Pathidar, has examined at Exh.151, wherein, he deposed that he is serving in the Sterling Hospital since seven months as M.R.D Officer. This witness has been show mark 26/31 and on perusal of the same, he said that this is a medical bill of Rs. 61,967 of Sakshi Girishbhai Masand and the said bill has been exhibited at Exh. 153.

Ld. Advocate for the applicant has relied upon the decision rendered in case of **Satishkumar Rasiklal Doctor Vs. Baldevbhai Chhaganbhai Thakor, reported in 2006(0) GLHEL- HC 217214 and the New India Insurance Co. Ltd. Vs. Doly Satish Gandhi, reported in 2025 ACJ 1061** and submitted that claimant has received the amount of medical treatment under contract of insurance for which, he had paid premium and therefore, no deduction can be made from the amount received from the insurance company for medical treatment.

In the case of **<u>Oriental Insurance Co. Ltd. Vs. Kokilaben, reported in 2015 (3) 2681,</u>** it has been observed as under;

4.11 Mr. *Nair, learned Counsel for the appellant, did contend that the medical expenses of Rs 2,04,305/-, which were already reimbursed in the medi-claim policy to the claimants, ought not to have been considered by the Tribunal for the purpose of awarding compensation.*

4.12 In our, view, the said contention should not detain us further since the Tribunal itself has considered one of the decision of this court in the case of Satishkumar Rasiklal Doctor Vs. Baldevbhai Chhaganbhai Thakor, reported in 2007 (14) GHJ: 2007 (1) GCD 727. We may further add that similar contention came to be considered by the Division Bench of this Court, wherein one of us (Jayant Patel J.) was a party in First Appeal No. 2303 of 2008 decided o 26/06/2012 (Oriental Insurance Co. Ltd. Vs. Bhakulabne Maheshbhai) and this court, in para 11 of the said decision, has observed as under

> *"Learned Advocate for the appellant also submitted that the claimant who had already received some amount under the Medi Claim Policy from another insurance Company is not entitled to receive amount towards the medical expenses from the insurer in the present case. We find that the decision of Hon'ble the Supreme Court in case of National Insurance Company Vs. Sebastian K. Jacob (supra) relied by him is on different facts and cannot be applied to the*

facts of the present case. In the said case, there were two difference Insurance Companies for two different vehicles involved in the accident and out of those two different Insurance Companies, the claimant had already received amount of medical expenses from one of the companies which was the insurer of one of the vehicles. In the present case, respondent No.1 has not received any amount of medical expenses either from the insurer of Maruti Van or from the G.S.R.T.C prior to the award of medical expenses passed by the Claims Tribunal. What was received by the claimant is the amount under her independent mediclaim policy, therefore, it cannot be said that the claimant is receive double amount under the same head. In fact, this Court in the case of Revaben wd/o. Nathubhai Mohanbhai Vs. Katibhai Narotttambhai Gohil, reported in 1994(2) GLR 1728 has settled this issue by holding that the tort-feasor is liable to pay damages for his tortious act cannot be permitted to take advantage of his own wrong. It is required to be mentioned that for mediclaim policy, separate premium is required to be paid any only then, a person is entitled to claim the amount incurred for medical treatment on the basis of such mediclaim policy, and therefore, what is being received under the mediclaim policy is an independent right other than the claim under the Motor Vehicles Act, and therefore, argument advanced by the learned Advocate for the applicant is devoid of any merits and stands rejected."

In the case of **Madhya Pradesh State Road Transport Corporation and another Vs. Priyank, reported in 200 ACJ 701,** it has been held that the claimant has received the amount of medical treatment under contract of insurance for which, he had paid premium and therefore, no deduction can be made from the amount received from the insurance company for medical treatment.

Having regard to the aforesaid decisions, the amount which has been disbursed in favour of the claimant under medical policy cannot be deducted from the total amount of medical expenses.

Therefore, considering the aforesaid aspects, the applicant is entitled to get **Rs. 4,89,312/- (Rupees Four Lakhs Eighty Nine Thousand Three Hundred Twelve)** towards medical expense.

(17.9) COMPENSATION UNDER OTHER HEADS.

Having regard to the the nature of injuries and the year of accident, it would be just and proper **to award Rs. 75,000/- towards pain, shock and suffering and Rs. 50,000/- towards attendant charges, transportation and special diet.**

(17.10) Loss of Amenities :

The another question which arises before this Tribunal is that, whether the present applicant is entitled to get the compensation under the head of Loss of Amenities ? For the determination of the above mentioned question, this court has taken the ratio laid down by the Supreme Court of India, in the case of **R.D. Hattangadi Vs. Pest Control (India) Pvt. ltd., ACJ 366 (SC)** in which case it was held by the Honb'le Supreme Court that,

"9. Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain and suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters i.e. on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life.

10. It cannot be disputed that because of the accident the appellant who was an active practicing lawyer has become paraplegic on account of the injuries sustained by him. It is really difficult in this background to assess the exact amount of compensation for the pain and agony suffered by the appellant and for having become a lifelong handicapped. No amount of compensation can

restore the physical frame of the appellant. That is why it has been said by courts that whenever any amount is determined as the compensation payable for any injury suffered during an accident, the object is to compensate such injury "so far as money can compensate" because it is impossible to equate the money with the human sufferings or personal deprivations. Money cannot renew a broken and shattered physical frame. "

Thus, looking to the age of applicant, disability affects normal activities. mobility and dignity, so, it would be just and proper to awards **Rs. 1,00,000/- towards loss of amenities.**

(17.11) In view of the above discussion, the claimant is entitled to the following amount of compensation

Sr.No.	Description	Amount (Rs.)
1.	Future loss of income.	15,42,240/-
2.	Actual loss of income.	90,000/-
3.	Medical expenses.	4,89,312/-
4.	Pain, shock and suffering	75,000/-
5.	Special diet, attendant charges and transportation.	50,000/-
6.	Loss Of Amenities	1,00,000/-
7.	**Total Amount of Compensation**	**23,46,552/-**

The claimant has prayed for compensation to the tune of Rs. 15,00,000/-. But The Motor Vehicles Act is considered as a beneficial and welfare legislation. The Hon'le Supreme Court of

India, has repeatedly held in cases of Nagappa vs. Gurdayal Singh and Mona Baghel vs. Sajjan Singh Yadav that, technicalities of pleading should not obstruct the award of fair compensation. There is no legal restriction that prevents the Tribunal or the High Court from awarding a compensation amount that exceeds what was claimed in the petition, provided the higher amount is just and reasonable based on the evidence on record.

(18) Issue no. 2 (In M.A.C.P. No. 134/2018)

(18.1) Injury

It has been stated in the claim petition that the applicant sustained injuries on the left rib, neck, and other parts of the body in the said accident. The aforesaid facts have been reiterated in the affidavit filed by the applicant in the form of examination-in-chief at Exh. 37. The injury certificate and treatment papers placed on record at Exh. 64, Exh. 65, Exh. 113, and Exh. 114 corroborate the factum of injuries.

(18.2) DISABILITY

Ld. Advocate Mr. S. P. Gupta for the applicant has placed on record the written submissions at Exh. 22 and submitted that the doctor has assessed the permanent disability to the extent of 12% of the body as a whole. In his cross-examination, the doctor has stated that the disability of the body as a whole could be half of that, and therefore, as per the cross-examination, the permanent disability of the body as a whole may be considered as 6%.

The disability certificate of the applicant has been placed on record at Exh. 145, which shows that the applicant has suffered 12% disability of the neck and right shoulder.

Dr. Tushar P. Modi has given his deposition at Exh.143, wherein he deposed that he holds an M.S. Orthopaedics degree and has been practicing privately in Vadodara for the last 31 years. He further deposed that he examined Tanvi Pratik Dalavi for permanent disability on 19/09/2018. He stated that at the time of examination, the ligament of the right shoulder had healed, but the movement of the right shoulder was restricted, the muscle strength had weakened, and the movement of the neck had also become restricted. Considering all these factors, he assessed the disability of the patient to the extent of 12% as per the doctor's manual.

Ld. Advocate Mr. K. A. Patel for opponent No.3 cross-examined the doctor. In his cross-examination, the doctor stated that the disability of the body as a whole can be taken as 6%. Therefore, considering the aforesaid aspects, it would be just and proper to assess the permanent disability of the body as a whole at 6%.

(18.3) <u>INCOME.</u>

It has been stated in the petition that at the time of the accident, the applicant was serving as a Professor at Karamsad Medical College, Karamsad, and was earning a salary of Rs. 45,000/- per month. The aforesaid facts have been reiterated in the affidavit filed by the applicant at Exh.37. In her cross-examination, she stated that at the time of the accident, she was working as an

Assistant Professor in the Physiotherapy College at Anand and was earning a salary of Rs. 43,000/- per month. A salary certificate issued by Bhaikaka University regarding payment of salary to Dr. Tanvi Dalvi for the months of November 2017, December 2017 and January 2018 has been placed on record at Exh.139. As per the said certificate, Dr. Tanvi P. Dalvi, Employee No. 14238, has been working with Bhaikaka University, Karamsad, as an Assistant Professor since 8th November 2016, and she was drawing a gross salary of Rs. 43,481/- in January 2018. After deductions of Rs. 1,800/- towards P.F., Rs. 200/- towards Professional Tax, and Rs. 1,150/- towards other deductions, her net pay for the month of January 2018 was Rs. 40,331/-.

One witness, Mr. Bharatkumar Kumudchandra Vyas, has been examined at Exh.136 on behalf of the applicant. In his deposition, he stated that he has been serving as a Consultant in Kishra Hospital for the last 12 to 13 years, and that Tanviben Pratikbhai Dalvi joined service in his hospital in 2016, at which time her salary was Rs. 39,000/- per month. He has placed on record the appointment letter of Tanvi issued by his hospital at Exh.138 (Mark 137/1). He has also produced a certificate showing the salary paid to Dr. Tanvi for the months of November 2017, December 2017 and January 2018 at Exh.139 (Mark 137/2). He deposed that the salary of Dr. Tanvi was directly credited to her bank account. This witness was cross-examined by Ld. Advocate Mr. K.A. Patel for opponent No. 3. In his cross-examination, he stated that it is true that Dr. Tanvi was serving on a contractual basis. It is true that her contract commenced in 2016 and was thereafter renewed. It is also true that Dr. Tanvi was not a permanent employee. He further stated that a person working on contract is not confirmed for permanent employment. He further stated that due to the accident, there was no decrease in the salary of Dr. Tanvi. He also admitted that her salary included other allowances and that the salary and allowances of Dr. Tanvi had increased.

Ld. Advocate Mr. S. P. Gupta for the applicant has placed on record written submissions at Exh. 22 and submitted that the applicant was earning a salary of Rs. 43,481/- at the time of the accident, and after deducting Professional Tax of Rs. 200/-, her net salary was Rs. 43,281/-. He has relied upon the following decisions in support of his submissions.

1. Decision of Hon'ble S.C In case of Magam H.D.I. General Insurance Co. Ltd. Vs. Nareshbhai Popatbhai Chotaniay, F.A. No. 44/2020.
2. Decision of Hon'ble Apex Court, rendered in the case Harekrushan Mahanto Vs. Himadri Sahu, C.A No. 2204/2025 (S.C).

Relying upon the aforesaid decisions, he submitted that while awarding compensation towards future loss of income, the applicant is entitled to the full multiplier in cases where there is no decrease in the applicant’s future income.

Therefore, considering the year of the accident and the nature of work, it would be just and proper to assess the monthly income of the applicant at Rs. 43,281/-.

(18.4) AGE AND MULTIPLIER

In the array of the petition, the age of the applicant is shown as 31 years. In the injury certificate and the discharge summary placed on record at Exh. 64 and Exh. 65 respectively, the age of the applicant is also shown as 31 years. The copy of the Aadhaar card of the applicant has been placed on record at Exh. 67, wherein the date of birth of the applicant is shown as 23/03/1986. Thus, the applicant was 31 years and 10 months old at the time of the accident. Therefore, the multiplier of **16** is applicable.

(18.5) Future Prospect

The another question arise before this Tribunal is that, whether the Applicant is entitled for Future Prospect in the calculation of total compensation or not ? In this regard this Tribunal has considered the ratio laid down by the Honb'le Supreme Court in the case of **Mohd. Sabeer VS. Regional Manager, U.P. State Road Transport Corporation, 2023 ACJ, 1.** And it was observed by the Honb'le Apex Court that,

' **FUTURE PROSPECTS**

17. The High Court has not applied the quantum for future prospect in the compensation granted. In its reasoning, the High Court has stated that the Income tax returns relied upon by the Appellant show that despite the injury the Appellant's income had subsequently increased and hence it cannot be said that there is a loss of future earnings.

18. It is a well settled position of law that in cases of permanent disablement caused by a motor accident, the claimant is entitled to not just future loss of income, but also future prospects. It has

been reiterated by this Court in multiple instances that "just compensation" must be interpreted in such a manner as to place the claimant in the same position as he was before the accident took place.

19. The accident that caused the injury took place on 12.06.2009. The acknowledgment of both the Income Tax Returns produced by the Appellant show that Tax Returns were till 31.03.2008 and 31.03.2009. Both the Income Tax Returns produced as proof of income were from before the accident took place, and hence the High Court's finding that the income of the Appellant has increased after the disability is incorrect.

20. It is also to be noted that even if the income of the Appellant had increased after the accident, it would not be enough grounds to disable the Appellant from claiming compensation for future prospect as the rise in income may be attributed to multiple other factors.

21. In light of National Insurance Company Limited V. Pranay Sethi and Others, the applicable 40% addition of future prospects will be given as compensation to the Appellant herein.

So, looking to the ratio held by the Honb'le Supreme Court in above mentioned case, the applicant is also entitled for the future prospect in compensation. The income of the applicant is considered as Rs. 43,281/- and as per the judgment of Pranay Sethi , 2017 (16) SCC 680, the applicant is entitled for 40 % addition of future prospects, as her age was 31 years at the time of the accident and she was doing a job as an assistant professor. Therefore, the total income of the applicant will be considered as Rs. 43,281/- plus 40 %

future prospect Rs. 17,312/- and total Rs. 60,593/- will be considered for the purpose of calculating the compensation.

(18.6) FUTURE LOSS OF INCOME

Thus, the applicant is entitled to get Rs.60,593/- (43,281 + 17,312/- future prospect) x 12 x 16 x 6/100 = **Rs. 6,98,031/- towards future loss of income.**

(18.7) Actual loss of income.

Ld. Advocate for the applicant has placed on record a certificate at Exh. 140 showing that the applicant was on leave for the period from 22/01/2018 to 01/04/2018. In the said certificate, it is stated as follows:

"This is to clarify that Dr. Tanvi Pratik Dalvi, Assistant Professor, Emp. No. 14248, whose signature is appended below, has been working with Charutar Arogya Mandal's K.M. Patel Institute of Physiotherapy, Karamsad, since 8th November, 2016. She was on leave without pay during the period from 22nd January 2018 till 1st April 2018. This certificate is being issued to Dr. Tanvi Dalvi for the specific purpose of submitting it to the Court."

One witness, Bharatkumar Kusumchandra Vyas, serving in Krishna Hospital, Karamsad, Tal. & Dist. Anand, has been examined at Exh. 136. In his deposition, he has stated that Dr. Tanvi was on leave without pay in his hospital during the period from 22/01/2018 to 01/04/2018.

Thus, it appears that the applicant could not attend her duty for approximately two months due to the injuries sustained in the accident, and therefore, she is entitled to receive **Rs. 43,281/- × 2 = Rs. 86,562/-** towards actual loss of income.

(18.8) MEDICAL EXPENSES

Ld. Advocate for the applicant has submitted that the applicant incurred medical expenses to the tune of Rs. 67,798/- for the treatment of injuries sustained in the accident. The medical bills amounting to Rs. 67,798/- have been placed on record at Exh. 66, and the applicant received the entire amount of medical expenses under her mediclaim policy. He has further argued that the applicant paid the mediclaim premium separately, and since the medical expenses were incurred due to the injuries sustained in the accident, she is entitled to recover the medical expenses independently. He has relied upon the decisions rendered in **(1) *Satishkumar Rasiklal Doctor vs. Baldevbhai Chhaganbhai Thakor*, reported in 2006 (0) GLHEL-HC 217214, and (2) *The New India Insurance Co. Ltd. vs. Dolly Satish Gandhi*, reported in 2025 ACJ 1061,** and contended that the applicant is entitled to medical expenses even though they were reimbursed by the insurance company.

It has been stated in the claim petition that the applicant incurred medical expenses to the tune of Rs. 75,000/-. In her affidavit filed in the form of examination-in-chief at Exh. 37, the applicant stated that she incurred medical expenses of Rs. 67,798/-. She has admitted in her cross-examination that she received the medical expenses from the mediclaim.

The medical bill of Rs. 67,798/- has been placed on record at Exh. 66, and the bill summary for the same amount has been produced at Exh. 114.

Mukeshbhai Baldevbhai Shreemali, serving in Sterling Hospital, Vadodara, a witness for the applicant, has been examined at Exh. 110. In his deposition, he stated that he brought the summary of the medical bill of Tanviben Pratikbhai Dalvi, which is produced at Mark 109/4 (Exh. 114), wherein the medical expenses are shown as Rs. 67,698/-. The applicant was covered under a mediclaim policy, and the hospital received the entire amount towards medical expenses under the said policy. The bill is exhibited at Exh. 114.

In the case of **Oriental Insurance Co. Ltd. Vs. Kokilaben, reported in 2015 (3) 2681,** it has been observed as under;

> 4.11 M*r. Nair, learned Counsel for the appellant, did contend that the medical expenses of Rs 2,04,305/-, which were already reimbursed in the medi-claim policy to the claimants, ought not to have been considered by the Tribunal for the purpose of awarding compensation.*
>
> *4.12 In our, view, the said contention should not detain us further since the Tribunal itself has considered one of the decision of this court in the case of Satishkumar Rasiklal Doctor Vs. Baldevbhai Chhaganbhai Thakor, reported in 2007 (14) GHJ: 2007 (1) GCD 727. We may further add that similar contention came to be considered by the Division Bench of this Court, wherein one of us (Jayant Patel J.) was a party in First Appeal No. 2303 of 2008 decided o 26/06/2012 (Oriental Insurance Co. Ltd. Vs. Bhakulabne Maheshbhai) and this court, in para 11 of the said decision, has observed as under*

"Learned Advocate for the appellant also submitted that the claimant who had already received some amount under the Medi Claim Policy from another insurance Company is not entitled to receive amount towards the medical expenses from the insurer in the present case. We find that the decision of Hon'ble the Supreme Court in case of National Insurance Company Vs. Sebastian K. Jacob (supra) relied by him is on different facts and cannot be applied to the facts of the present case. In the said case, there were two difference Insurance Companies for two different vehicles involved in the accident and out of those two different Insurance Companies, the claimant had already received amount of medical expenses from one of the companies which was the insurer of one of the vehicles. In the present case, respondent No.1 has not received any amount of medical expenses either from the insurer of Maruti Van or from the G.S.R.T.C prior to the award of medical expenses passed by the Claims Tribunal. What was received by the claimant is the amount under her independent mediclaim policy, therefore, it cannot be said that the claimant is receive double amount under the same head. In fact, this Court in the case of Revaben wd/o. Nathubhai Mohanbhai Vs. Katibhai Narotttambhai Gohil, reported in 1994(2) GLR 1728 has settled this issue by holding that the tort-feasor is liable to pay damages for his tortious

act cannot be permitted to take advantage of his own wrong. It is required to be mentioned that for mediclaim policy, separate premium is required to be paid any only then, a person is entitled to claim the amount incurred for medical treatment on the basis of such mediclaim policy, and therefore, what is being received under the mediclaim policy is an independent right other than the claim under the Motor Vehicles Act, and therefore, argument advanced by the learned Advocate for the applicant is devoid of any merits and stands rejected."

In the case of **Madhya Pradesh State Road Transport Corporation and another Vs. Priyank, reported in 200 ACJ 701,** it has been held that the claimant has received the amount of medical treatment under contract of insurance for which, he had paid premium and therefore, no deduction can be made from the amount received from the insurance company for medical treatment.

Having regard to the aforesaid decisions, the amount which has been disbursed in favour of the claimant under medical policy cannot be deducted from the total amount of medical expenses.

Therefore, considering the aforesaid aspects, the applicant is entitled to get **Rs. 67,798/- (Rupees Sixty Seven Thousand Seven Hundred Ninety Eighty Only)** towards medical expense.

(18.9) COMPENSATION UNDER OTHER HEADS.

Having regard to the the nature of injuries and the year of accident, it would be just and proper **to award Rs. 10,000/- towards pain, shock and suffering and Rs. 10,000/- towards attendant charges, transportation and special diet.**

(18.10) Loss of Amenities :

The another question which arises before this Tribunal is that, whether the present applicant is entitled to get the compensation under the head of Loss of Amenities ? For the determination of the above mentioned question, this court has taken the ratio laid down by the Supreme Court of India, in the case of **R.D. Hattangadi Vs. Pest Control (India) Pvt. ltd., ACJ 366 (SC)** in which case it was held by the Honb'le Supreme Court that,

"9. Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain and suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters i.e. on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life.

10. It cannot be disputed that because of the accident the appellant who was an active practicing lawyer has become paraplegic on account of the injuries sustained by him. It is really difficult in this background to assess the exact amount of compensation for the pain and agony suffered by the appellant and for having become a lifelong handicapped. No amount of compensation can restore the physical frame of the appellant. That is why it has been said by courts that whenever any amount is determined as the compensation payable for any injury suffered during an accident, the object is to compensate such injury "so far as money can compensate" because it is impossible to equate the money with the human sufferings or personal deprivations. Money cannot renew a broken and shattered physical frame. "

Thus, looking to the age of applicant, disability affects normal activities. mobility and dignity, so, it would be just and proper to awards **Rs. 20,000/- towards loss of amenities.**

(18.11) In view of the above discussion, the claimant is entitled to the following amount of compensation

Sr. No.	Description	Amount (Rs.)
1.	Future loss of income.	6,98,031/-
2.	Actual loss of income.	86,562/-
3.	Medical expenses.	67,798/-
4.	Pain, shock and suffering	10,000/-
5.	Special diet, attendant charges and transportation.	10,000/-
6.	Loss Of Amenities	20,000/-
7.	**Total Amount of Compensation**	**8,92,391/-**

The claimant has prayed for compensation to the tune of Rs. 5,00,000/-. But The Motor Vehicles Act is considered as a beneficial and welfare legislation. The Hon'le Supreme Court of India, has repeatedly held in cases of Nagappa vs. Gurdayal Singh and Mona Baghel vs. Sajjan Singh Yadav that, technicalities of pleading should not obstruct the award of fair compensation. There is no legal restriction that prevents the Tribunal or the High Court from awarding a compensation amount that exceeds what was claimed in the petition, provided the higher amount is just and reasonable based on the evidence on record.

(19) Issue no. 2 (In M.A.C.P. No. 135/2018)

(19.1) Ld. Advocate for the applicant has placed on record written submissions at Exh. 20, wherein it has been submitted that at the time of the accident, the deceased was studying physiotherapy (4th year) at M.K. Patel Institute of Physiotherapy College, Karamsad. It is further submitted that had the deceased not died in the accident, she could have pursued her career after completing her M.D., and upon higher studies, she could have earned around Rs. 50,000/- per month by practicing as a physiotherapist. He has argued that the accident took place in the year 2018 and the deceased was a physiotherapy student; therefore, considering the decisions of the Hon’ble Gujarat High Court and the Hon’ble Apex Court, the notional income of the deceased may be assessed at Rs. 50,000/-, which would be just and proper. Ld. Advocate for the applicant has relied upon the following decisions in support of his arguments :

1. The decision of the Hon'ble Apex Court, rendered in the case Yashodama S. R.M.Reliance General Insurance Co. Ltd., reported in 2023 A.C.H. 605 (S.C.)
2. The decision of the Hon'ble S.C, rendered in the case of Kumud Gupta and others Vs. Iffco Tokiyo General Insurance Co. Ltd. reported in 2024 A.C.J. 658, (S.C.)
3. The decision of the Hon'ble Guarat High Court,

rendered in case of Ashwinbhai Jayantilal Modi Vs. Ramkaran Ramchandra Sharma and others, passed in C.A 8131/2014 and 8132/2014.

4. The decision of Hon'ble Apex Court, rendered in the case of Bishnupriya Panda Vs. Basanti Manjeri Mohanti, reported in 2023 A.C.H. 2393 (S.C).

(19.2) Income

It has been stated in the claim petition that the deceased was studying physiotherapy (4th year) at M.K. Patel Institute of Physiotherapy College, Vadodara. The facts narrated in the claim petition have been reiterated in the examination-in-chief of applicant No. 1 at Exh. 17. At Exh.- 72, a copy of the deceased's GUJCET marksheet has been placed on record. At Exh.- 73 to Exh.- 75, copies of the first, second, and third-year physiotherapy marksheets of the deceased, Maitriben, have been placed on record. At Exh.- 75, a copy of the certificate issued to the deceased by the National Service Scheme has been placed on record. At Exh.- 77, a copy of the acknowledgment slip issued to the deceased by the Medical Board has been placed on record.

It is relevant to mention that in the decision of the Hon'ble Apex Court rendered in *Bishnupriya Panda vs. Basanti Manjeri Mohanti*, reported in 2023 A.C.J. 2393 (S.C.), the Hon'ble Apex Court assessed the notional income of an MBBS student at Rs. 50,000/- per month.

In this petition, it is admitted that the, deceased was studying in the 4th year of physiotherapy course from the college and at the time of the accident. Ld. Advocate has argued to consider the deceased as a student of medical. But in India, a Physiotherapy student is *not* considered an MBBS student. Because, MBBS is a medical degree regulated by the National Medical Commission (NMC). Physiotherapy (BPT) is a separate professional course regulated by the National Commission for Allied and Healthcare Professions (NCAHP) (earlier by respective universities/state councils). MBBS doctors are licensed medical practitioners and can diagnose, prescribe medicines, and perform medical/surgical procedures. Physiotherapists are *allied health professionals* ; they can assess and treat musculoskeletal/neurological conditions through physical therapy, but cannot prescribe medicines or perform surgery. Physiotherapy is not equivalent to MBBS. Physiotherapists are not medical practitioners under the Medical Council regulations, though they are recognized as healthcare professionals. This Tribunal may recognise physiotherapy as a medical/health science course, but not equal to MBBS. For notional income assessment, some courts consider physiotherapy students as skilled professionals—but still distinct from MBBS students.

Notional Income for Non-Earner / Student (Physiotherapy)

Courts often assign a *notional income* to students or non-earning claimants to account for their future earning potential. The Honb'le Supreme Court held that a student's notional income should not be equated to that of an unskilled worker. In MACT cases, Indian courts do not have a fixed statutory notional income for a physiotherapy intern. But based on recent High Court and Supreme Court trends, the notional income of a student who has completed BPT and is doing internship is generally taken as ₹15,000 to ₹25,000 per month, and in some cases even higher depending on evidence. A BPT graduate (even during internship) is considered a **skilled health-care professional**. Physiotherapists in private hospitals/clinics typically earn between **₹18,000–₹30,000 p.m.** as freshers. Courts tend to adopt an income slightly lower than a fully-qualified physiotherapist but higher than an unskilled worker.

Therefore, Considering that the deceased was in the fourth year of BPT (Physiotherapy) and was about to complete her study, at the time of the accident, and keeping in view the earning potential of a qualified physiotherapist in the healthcare sector, it would be just and proper to assess deceased's notional income at Rs. 30,000/- per month. Therefore, considering the year of the accident and the nature of work, it would be just and proper to assess the monthly income of the applicant's deceased daughter at Rs. 30,000/- .

Thus, Having regard to the aforesaid and year of accident, it would be just and proper to assess monthly income of the deceased at Rs. 30,000/- p.m at the time of accident.

(19.3) Age and multiplier

The copy of the Aadhar card and the copy of the school leaving certificate of the deceased have been placed on record at Exh. 70 and Exh. 71 respectively, wherein the date of birth of the deceased is shown to be 10/10/1996. Thus, the deceased was 21 years, 3 months, and 10 days old at the time of the accident, and therefore, the **multiplier of 18 is applicable.**

(19.4) Future Prospect

So far as the addition towards future prospects is concerned, in view of the decision of the Hon'ble Apex Court in ***National Insurance Co. Ltd. vs. Pranay Sethi*, reported in 2017 ACJ 2700,** and considering the fact that the deceased was 21 years, 3 months, and 10 days old at the time of the accident and was studying physiotherapy (4th year) at M.K. Patel Institute of Physiotherapy College, Vadodara, **it would be just and proper to make a 40% addition towards future prospects in the actual income of the deceased.**

(19.5) Calculation of compensation :-

The monthly income of the deceased is assessed at Rs. 30,000/- p.m and therefore, after adding 40% towards future prospects, **it comes to Rs. 42,000/- p.m. [(Rs. 30,000/- (Monthly**

Income + Rs. 12,000/- (Future prospect)]. Considering the fact that the deceased was a bachelor, 1/2 amount is required to be deducted towards personal expenses of the deceased and therefore, **after deducting 1/2 amount, i.e Rs. 21,000/- , the Loss of dependency would come to Rs. 21,000/- X 12 X 18 (Multiplier) = Rs.45,36,000/- (Rupees Forty Five Lacs Thirty Six Thousand Only).**

Considering the recent decision of Hon'ble Apex Court rendered in the case of National Insurance Company Limited Vs. Pranay Sethi (Supra) & Ors., reported in 2017 ACJ 2700, **Rs. 1,33,100/- *(Incremental of 10% after every three years after 2017 is applied)* is awarded towards conventional head i.e Loss of estate, Loss of consortium and funeral expense.**

(19.6) The Breakup of the compensation is as under.

Calculation of actual loss

1.	Rs. 45,36,000/-	For Loss of Dependency
2.	Rs. 18,150/-	Towards Loss of Estate
3.	Rs. 18,150/-	For Funeral Expenses.
4.	Rs. 96,800/-	Loss of consortium (Rs. 48,400/- for each applicant)
5.	**Rs. 46,69,100/-**	**Total Compensation**

The claimant has prayed for compensation to the tune of Rs. 45,00,000/-. But The Motor Vehicles Act is considered as a beneficial and welfare legislation. The Hon'le Supreme Court of India, has repeatedly held in cases of Nagappa vs. Gurdayal Singh and Mona Baghel vs. Sajjan Singh Yadav that, technicalities of pleading should not obstruct the award of fair compensation. There is no legal restriction that prevents the Tribunal or the High Court from awarding a compensation amount that exceeds what was claimed in the petition, provided the higher amount is just and reasonable based on the evidence on record.

(20) Issue no. 2 (In M.A.C.P. No. 136/2018)

(20.1) It has been stated in the claim petition that the applicant sustained a *pubic rami* fracture on the waist, fractures at M-3 and L-3 of the shaft femur of the right leg, injuries on the face, eyes and waist, injuries to the right lung, and other bodily injuries in the said accident. These facts have been reiterated in the affidavit filed by the applicant in the form of examination-in-chief at Ex.- 29. The treatment papers placed on record at Ex.- 80 to Ex.- 82 and Ex.- 83 to Ex.- 85 corroborate the factum of injuries.

(20.2) DISABILITY

Learned Advocate Mr. S. P. Gupta for the applicant has placed on record written submissions at Exh. 21 and submitted that the applicant has suffered 54% permanent disability of the right leg and 10% disability of the waist. Thus, the disability of the body as a whole comes to 64%, which is required to be taken into consideration while computing the compensation. He has further submitted that in the case of *Aredhyu Priya vs. State Express*

Transport Corporation, reported in 2020 A.C.J. 2159 (S.C.), the Hon'ble Court considered 50% future prospects in a case involving 31.1% disability and also awarded Rs. 1,50,000/- towards loss of comfort and loss of amenities, and Rs. 2,00,000/- towards pain, shock and suffering. He has further submitted that in the case of *Madivallappa vs. Maharashtra State Road Transport Corporation*, in Civil Appeal No. 12009 of 2024, it has been observed that while computing compensation towards loss of future earning, future prospects must be taken into consideration, relying on the decision of the Hon'ble Supreme Court in the case of *Pranay Shethi*. He has submitted that considering the above decisions, 40% future prospects are required to be taken into account while computing the compensation.

The disability certificate of the applicant has been placed on record at Exh. 146, which shows that the applicant has suffered 54% permanent partial impairment and loss of function of the right leg, and 10% disability of the back and pelvis.

Dr. Tushar P. Modi has given his deposition at Exh. 143, wherein he deposed that he holds an M.S. in Orthopaedics and has been practising privately in Vadodara for the last 31 years. He stated that he examined Palak Mukeshkumar Shah for permanent disability on 19/04/2025. He further stated that due to the vehicular accident on 20/01/2018, Palak Shah had sustained a fracture of the femur in the right leg, fractures of four pubic rami, fractures of the sacrum in the waist, and lumbar vertebra injuries, and also sustained head injuries, for which she had taken treatment at Sterling Hospital, Navjeevan Hospital, and Birzam Hospital at

Ahmedabad, and had also undergone surgeries. He stated that he had perused all the treatment papers. He further stated that the patient has pain in the waist and pain in the right leg, and is unable to walk, run, or perform heavy work. On examination, it was found that the movement of the right hip was restricted and the muscles had weakened. The movement of the right knee was up to 30 degrees. The movement of the waist was also restricted. Considering all these factors, he assessed the permanent disability at 54% for the right leg and 10% for the waist. He further stated that the applicant has sustained injuries to multiple parts of the body and, therefore, the disability cannot be considered by simply taking half. For this, the Cashler Formula needs to be applied. In his cross-examination, he denied the suggestion that the disabilities mentioned in the certificate at Exh. 146 (54% and 10%) could be reduced through physiotherapy treatment.

Learned Advocate for the applicant has placed on record a pursis at Exh.- 177 stating that Dr. Tushar P. Modi had issued a disability certificate assessing 54% disability of the right lower limb and 10% disability of the back and pelvis, and that Dr. Modi had been examined at Exh.- 143, wherein he stated in cross-examination that it is not true that the disabilities mentioned in Exh.- 146 (54% and 10%) could be reduced by physiotherapy treatment. It is further stated in the pursis that as per the Cashler Formula, the permanent disability of the body as a whole comes to 58.6 % and, therefore, the applicant has no objection if permanent disability of the body as a whole is considered at 58.6% for the purpose of computing compensation. Learned Advocate for the opponent–Insurance Company has made an endorsement "Seen".

Learned Advocate for the applicant has also placed on record the original letter issued by Dr. Tushar P. Modi below the document list at Exh.- 178 (Mark 178/1) regarding computation of permanent disability as per the Cashler Formula, wherein the permanent disability of the body as a whole is mentioned as 58.6%. A xerox copy of page No. 49 of the Cashler Formula has also been placed on record below the documentary list at Exh.- 178 (Mark 178/2).

Therefore, considering the aforesaid aspects, it would be just and proper to assess the permanent disability of the body as a whole at 58.6 %.

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(20.3) INCOME.

It has been stated in the petition that, at the time of the accident, the applicant was studying in the second year of the M.B.B.S. course at Karamsad Medical College. The aforesaid facts have been reiterated in the affidavit filed by the applicant at Exh.- 29. In her cross-examination, she admitted that at the time of the accident, she was studying in the second year of M.B.B.S.

Learned Advocate for the applicant has placed on record the copies of the applicant's S.S.C. and H.S.C. mark sheets at Exh.- 87 and Exh.- 88 respectively. Copies of the first-year M.B.B.S. and second-year M.B.B.S. mark sheets of the applicant have been placed on record at Exh.- 89 and Exh.- 90 respectively.

Learned Advocate Mr. S. P. Gupta for the applicant has placed on record written submissions at Exh.- 21 and submitted that the applicant is a medical student. He has relied upon the following decisions in support of his arguments.

1. Decision of Hon'ble S.C In case of Yoshodam S. Vs. R.M.Reliance General Insurance Co. Ltd., reported in 2023 A.C.J. 605 (S.C.)

2. Decision of the Hon'ble S.C in case of Ashvinbhai Jayantilal Modi Vs. Ramkaran Ramchandra Sharma and others, C.A 8131/2014 and 8132/2014.

3. Decision of Hon'ble S.C In case of Bishnu Priay Panda Vs. Basanti Manjeri Mohanti and others, reported in 2023 , A.C.H,. 2393 (S.C)

He has stated that the accident had taken in 2018 and at the time of accident, the applicant was studying in M.B.B.S second year and therefore, notional income of the applicant may be considered at Rs. 50,000/- p.m considering the above cited decision of Hon'ble S.C.

For considering the Notional income of the MBBS student, this court has thoroughly gone through to the judjement passed by the Honb'le Orissa High Court in the case of ***Bishnupriya Panda Vs. Basanti Manjari Mohanty, (AIR Online 2022 Ori 361)*** it was decided by the Honb'le High Court of Orissa that,

“ 9. Before delving further some undisputed facts need to be mentioned here. Those are, the deceased was aged about 21 years being her date of birth on 1.6.1992, she was a meritorious student in her career and she was prosecuting her 4th year MBBS course at VSS Medical College and Hospital, Burla. While assessing her notional income, the learned Tribunal has made a detail analysis of her past career and the certainty of her future employment as a Doctor. The relevant observations of the Tribunal in this regard are reproduced below :

"9. It is the case of the petitioner that the deceased was pursuing her 4th year M.B.B.S study at the time of her death. P.W.1 has filed and proved the certificates of merit of the deceased for Class-IV to VIII. Those are marked from Exts.11 to 15. These documents reveal that from Class-IV to Class-VIII the deceased was a rank holder in the school by placing herself thrice in first position and once in second and third position.. P.W.1 also filed and proved the mark sheets of her deceased daughter for Secondary School Examination of the year 2008 and Senior Secondary School Certificate Examination for the year 2010. Those are marked as Exts.17 and 18 respectively. Ext.17 reveals that the deceased had secured A-1 Grade in all the subjects. Exts. 18 reveals that the deceased secured A-1 grade in prime subjects like Physics, Chemistry and Biology. She has also secured A-2 grade in English and Mathematics. P.W.1 has filed and proved one certificate of Scholarship amounting to Rs.20,000/- awarded to her deceased daughter by the Department of Biotechnology as the deceased had an outstanding performance in Biology in All India Senior Secondary School Certificate Examination (CBSE). It is marked as Ext.9. P.W.1 has filed two mark sheets of the year 2011 and 2012 of V.S.S. Medical College, Burla. Those are marked as Exts.10 and 10/a. These exhibits reveal that the deceased had secured 70% of marks in M.B.B.S. course of these two years.

12. In a case of death of a student who has no income, the Tribunal has to take a notional income as the income of the deceased. Such notional income will differ from case to case. That is why no straight jacket formula can be adopted. In the case at hand, it is found that the deceased was a brilliant scholar. The deceased was making herself ready to be in the profession of medicine. Medicine as a profession, is the only profession which

shall have its importance till the civilization exists, because health was/is and shall be utmost priority for every individual, family and society at large. Presently, our country is in extreme need of qualified medical professionals as there is dearth of doctors. In such a situation, any doctor with average standard will get ample opportunity of employment, either in the Government or in any private sector.

10. Further, the learned Tribunal has added 40% of such notional income towards future prospects taking the deceased under self-employment as a Doctor.

Thus the learned Tribunal has considered the employment aspect of the deceased from a logical point of view for the purpose of determining just compensation. It is true that the deceased on the date of accident was a non-earning person. Taking advantage of the same, it is contended by Mr. Khan, learned counsel for the insurer that the amount prescribed in Second Schedule of the M.V. Act for non-earning persons should be made applicable, or at best the daily wage rate prescribed for highly skilled labourers on the date of accident should be applied. Such argument advanced by the insurer is completely unacceptable. It is for the reason that a 4th year student of MBBS Course having a meritorious educational career can never be treated as a highly skilled labourer nor can her income be equated with such amount prescribed in the Second Schedule of the M.V. Act as notional income for such non-earning persons. Because considering the demand for Doctors in the society, a simple MBBS pass out, even without post graduation, will never sit ideal. Moreover, the social reputation and prestige attached to the profession of Doctor is pious and priceless.

12. The Supreme Court in the case of Meena Pawaia and others v. Ashraf Ali and others, 2021 SCC OnLine SC 1083 : (AIR Online 2021 SC 1044), where the deceased was a 3rd year bachelor in civil engineering and died in the motor vehicular accident on 12.9.2012, has taken his monthly income at Rs.10,000/- at least.

Further, the Supreme Court has added 40% towards future prospects. Such relevant observations of the Supreme Court are reproduced herewith.

“ While awarding the future economical loss, when the deceased died at the young age 21-22 years and was not earning at the time of death/accident, as per catena of decisions of this Court, the income for the purpose of determining the future economic loss is always done on the basis of guesswork considering many circumstances namely the educational qualification and background of the family, etc. Therefore looking to the educational qualification and the family background and as observed herein above, the deceased was having a bright future rd studying in the 3 year of civil engineering. we are of the opinion that the income of the deceased at least ought to have been considered at least Rs.10,000/- per month, more particularly considering the fact that the labourers /skilled labourers were getting Rs.5,000/- per month even under the Minimum Wages Act in the year 2012.

Therefore we are of the opinion that even in case of a deceased who was not serving at the time of death and had no income at the time of death, their legal heirs shall also be entitled to future prospects by adding future rise in income as held by this court in the case of Pranay Sethi (AIR 2017 SC 5157) (supra) le. addition of 40% of the income determined on guesswork considering the educational qualification, family background etc., where the deceased was below the age of 40 years."

13. In the instant case considering the meritorious career of the deceased and the certainty of her future employment after one or two years of the accident had she not died, the social status and reputation attached to the profession of a Doctor and the prospects in career, I fully agree with the assessment done by the learned Tribunal in determining her notional income at Rs.50,000/- per month and consequential loss of dependency to the tune of Rs.68,04,000/-. Learned Tribunal has also rightly

added Rs. 70,000/- to the same towards conventional heads including loss of filial consortium to make the total compensation to Rs.68,74,000/-. It goes without saying that the prayer for enhancement by the mother (the original claimant) is seen without merit keeping in view the initial emoluments and allowances attached to a Doctor when she enters into the professional employment.

The aforesaid judgment was upheld by the *Hon'ble Supreme Court in Civil Appeal No. 4911 of 2023, decided on 04/08/2023.* The Hon'ble Apex Court confirmed the view taken by the High Court and held that the notional income of a 4 th-year MBBS student ought to be assessed at Rs. 50,000/- per month. The Supreme Court, while affirming the reasoning of the High Court, observed that considering the stage of education, future earning potential, and the prospects available to a medical graduate, the assessment of notional income at Rs. 50,000/- was just and proper.

Therefore, considering the year of accident and the nature of work, **it would be just and proper to assess monthly income of the applicant at Rs. 50,000/-.**

(20.4) AGE AND MULTIPLIER

In the array of the petition, the age of the applicant has been shown as 20 years. In the medical certificate issued by Sterling Hospital placed on record at Exh.- 80, and in the injury certificate of the applicant placed on record at Exh.- 81, the age of the applicant has been shown as 19 years. In the discharge summary placed on record at Exh.- 82, the age of the applicant has been shown as 19 years. In the discharge summary placed on record at Exh.- 83, the age of the applicant has been shown as 19 years. In the discharge summary of the applicant placed on record at Exh.- 84, the age of the applicant has also been shown as 19 years. The copy of the Aadhaar card of the applicant has been placed on record at Exh.- 86, wherein the date of birth of the applicant has been shown as 07/04/1998. Thus, the applicant was 19 years, 9 months, and 13 days old at the time of the accident. **Therefore, the multiplier of 18 is applicable.**

(20.5) Future Prospect

The another question arise before this Tribunal is that, whether the Applicant is entitled for Future Prospect in the calculation of total compensation or not ? In this regard this Tribunal has considered the ratio laid down by the Honb'le Supreme Court in the case of **Mohd. Sabeer VS. Regional Manager, U.P. State Road Transport Corporation, 2023 ACJ, 1.** And it was observed by the Honb'le Apex Court that,

' **FUTURE PROSPECTS**

17. The High Court has not applied the quantum for future prospect in the compensation granted. In its reasoning, the High Court has stated that the Income tax returns relied upon by the Appellant show that despite the injury the Appellant's income had subsequently increased and hence it cannot be said that there is a loss of future earnings.

18. It is a well settled position of law that in cases of permanent disablement caused by a motor accident, the claimant is entitled to not just future loss of income, but also future prospects. It has been reiterated by this Court in multiple instances that "just compensation" must be interpreted in such a manner as to place the claimant in the same position as he was before the accident took place.

19. The accident that caused the injury took place on 12.06.2009. The acknowledgment of both the Income Tax Returns produced by the Appellant show that Tax Returns were till 31.03.2008 and 31.03.2009. Both the Income Tax Returns produced as proof of income were from before the accident took place, and hence the High Court's finding that the income of the Appellant has increased after the disability is incorrect.

20. It is also to be noted that even if the income of the Appellant had increased after the accident, it would not be enough grounds to disable the Appellant from claiming compensation for future prospect as the rise in income may be attributed to multiple other factors.

21. In light of National Insurance Company Limited V. Pranay Sethi and Others, the applicable 40% addition of future prospects will be given as compensation to the Appellant herein.

So, looking to the ratio held by the Honb'le Supreme Court in above mentioned case, the applicant is also entitled for the future prospect in compensation. The income of the applicant is considered as Rs. 50,000/- and as per the judgment of Pranay Sethi , 2017 (16) SCC 680, the applicant is entitled for 40 % addition of future prospects, as her age was 20 years at the time of the accident and she was a student of second year M.B.B.S. Therefore, the total income of the applicant will be considered as Rs. 50,000/- plus 40 % future prospect Rs. 20,000/- and total

Rs. 70,000/- will be considered for the purpose of calculating the compensation.

(20.6) <u>FUTURE LOSS OF INCOME</u>

Thus, the applicant is entitled to get Rs. 70,000/- x 12 x 18 x 58.6/100 = **<u>Rs. 88,60,320/- towards future loss of income.</u>**

(20.7) <u>Actual loss of income.</u>

Mukeshbhai Baldevbhai Shreemali, serving in Sterling Hospital, Vadodara, the witness for the applicant, has been examined at Exh.120. In his deposition, he stated that the applicant, Palak Mukesh Shah, was admitted in Sterling Hospital. He produced the certified copy of the discharge summary, and as per the said report, Palakben was admitted in the hospital on 20/01/2018 and discharged on 02/02/2018. The said document has been exhibited at Exh. 121.

Dharmesh Devilal Pathidar was examined at Exh.151, wherein he deposed that he has been serving in Sterling Hospital for the last seven months as an M.R.D. Officer. He produced a copy of the certificate issued by the hospital at Mark 26/55, and as per the said certificate, Palak Mukeshbhai Shah had taken rest in the hospital for the period from 11/02/2018 to 20/03/2018.

The copy of the discharge summary issued by Sterling Addlite India Pvt. Ltd. to the applicant has been placed on record at Exh.154, from which it appears that the applicant was admitted in the hospital on 20/01/2018 and discharged on 02/02/2018.

Looking to the nature of injuries, the applicant could not have worked/studied for a period of three months, and therefore she is entitled to Rs. 50,000/- × 3 = **Rs. 1,50,000/- towards actual loss of income.**

(20.8) MEDICAL EXPENSES

The learned Advocate for the applicant has submitted that the applicant incurred medical expenses to the tune of Rs. 10,13,727/- during her treatment at Sterling Hospital. It has been stated in the claim petition that the applicant incurred medical expenses amounting to Rs. 12,00,000/-. In the affidavit filed by the applicant in the form of examination-in-chief at Exh.21, she has deposed that she incurred medical expenses to the tune of Rs. 10,00,000/-. She has further stated that the original medical bill of Rs. 10,13,727/- has been placed on record, out of which Rs. 1,00,000/- has been sanctioned under the mediclaim policy.

The mediclaim bill of the applicant amounting to Rs. 6,25,000/- has been placed on record at Exh. 122. Thus, the applicant incurred Rs. 6,25,000/- towards medical treatment for the injuries sustained in the accident.

Mukeshbhai Baldevbhai Shreemali, serving in Sterling Hospital, Vadodara, and examined as a witness for the applicant at Exh. 120, stated in his deposition that he had brought the summary of the medical bill of Palak Mukeshbhai Shah, which is produced at Mark 119/2. As per the said summary, the medical expenses amounted to Rs. 6,25,000/-. The applicant was covered under a mediclaim policy, and the hospital received Rs. 1,00,789/- under the said policy, while the remaining amount was paid by the applicant. The said bill has been exhibited at Exh.122.

It is pertinent to mention that the applicant has placed on record the medical bill of Rs. 10,13,727/- at Mark 26/65, out of which Rs. 6,25,000/- pertains to the bills of Sterling Hospital, which have been separately exhibited at Exh. 122. Thus, the medical bill placed on record at Mark 26/65 includes the amount of Rs. 6,25,000/- shown at Exh. 122. The remaining original bills placed on record below Mark 26/65, though not exhibited, are original documents. Therefore, it appears that the applicant incurred total medical expenses to the tune of Rs. 10,13,727/- due to the injuries sustained in the accident.

Ld. Advocate for the applicant has relied upon the decision rendered in case of **Satishkumar Rasiklal Doctor Vs. Baldevbhai Chhaganbhai Thakor, reported in 2006(0) GLHEL- HC 217214 and the New India Insurance Co. Ltd. Vs. Doly Satish Gandhi, reported in 2025 ACJ 1061** and submitted that claimant has received the amount of medical treatment under contract of insurance for which, he had paid premium and therefore, no deduction can be made from the amount received from the insurance company for medical treatment.

In the case of **Oriental Insurance Co. Ltd. Vs. Kokilaben, reported in 2015 (3) 2681,** it has been observed as under;

4.11 Mr. *Nair, learned Counsel for the appellant, did contend that the medical expenses of Rs 2,04,305/-, which were already reimbursed in the medi-claim policy to the claimants, ought not to have been considered by the Tribunal for the purpose of awarding compensation.*

4.12 In our, view, the said contention should not detain us further since the Tribunal itself has considered one of the decision of this court in the case of Satishkumar Rasiklal Doctor Vs. Baldevbhai Chhaganbhai Thakor, reported in 2007 (14) GHJ: 2007 (1) GCD 727. We may further add that similar contention came to be considered by the Division Bench of this Court, wherein one of us (Jayant Patel J.) was a party in First Appeal No. 2303 of 2008 decided o 26/06/2012 (Oriental Insurance Co. Ltd. Vs. Bhakulabne Maheshbhai) and this court, in para 11 of the said decision, has observed as under

> *"Learned Advocate for the appellant also submitted that the claimant who had already received some amount under the Medi Claim Policy from another insurance Company is not entitled to receive amount towards the medical expenses from the insurer in the present case. We find that the decision of Hon'ble the Supreme Court in case of National Insurance Company Vs. Sebastian K. Jacob (supra) relied by him is on different facts and cannot be applied to the facts of the present case. In the said case, there were two difference Insurance Companies for two different vehicles involved in the accident and out of those two different Insurance Companies, the claimant had already received amount of medical expenses from one of the companies which was the insurer of one of the vehicles. In the present case, respondent No.1 has not received any amount of medical expenses either from the insurer of Maruti Van or from the G.S.R.T.C prior to the award of medical expenses passed by the Claims Tribunal. What was received by the claimant is the amount under her*

independent mediclaim policy, therefore, it cannot be said that the claimant is receive double amount under the same head. In fact, this Court in the case of Revaben wd/o. Nathubhai Mohanbhai Vs. Katibhai Narotttambhai Gohil, reported in 1994(2) GLR 1728 has settled this issue by holding that the tort-feasor is liable to pay damages for his tortious act cannot be permitted to take advantage of his own wrong. It is required to be mentioned that for mediclaim policy, separate premium is required to be paid any only then, a person is entitled to claim the amount incurred for medical treatment on the basis of such mediclaim policy, and therefore, what is being received under the mediclaim policy is an independent right other than the claim under the Motor Vehicles Act, and therefore, argument advanced by the learned Advocate for the applicant is devoid of any merits and stands rejected."

In the case of **Madhya Pradesh State Road Transport Corporation and another Vs. Priyank, reported in 200 ACJ 701,** it has been held that the claimant has received the amount of medical treatment under contract of insurance for which, he had paid premium and therefore, no deduction can be made from the amount received from the insurance company for medical treatment.

Having regard to the aforesaid decisions, the amount which has been disbursed in favour of the claimant under medical policy cannot be deducted from the total amount of medical expenses.

Therefore, considering the aforesaid aspects, the applicant is entitled to get **Rs. 10,13,727/- (Rupees Ten**

Lakhs Thirteen Thousand Seven Hundred Twenty Seven Only) towards medical expense.

(20.9) COMPENSATION UNDER OTHER HEADS.

Having regard to the the nature of injuries and the year of accident, it would be just and proper **to award Rs. 75,000/- towards pain, shock and suffering and Rs. 75,000/- towards attendant charges, transportation and special diet.**

(20.10) Loss of Amenities :

The another question which arises before this Tribunal is that, whether the present applicant is entitled to get the compensation under the head of Loss of Amenities ? For the determination of the above mentioned question, this court has taken the ratio laid down by the Supreme Court of India, in the case of **R.D. Hattangadi Vs. Pest Control (India) Pvt. ltd., ACJ 366 (SC)** in which case it was held by the Honb'le Supreme Court that,

"9. Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far non- pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain and suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters i.e. on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life.

10. It cannot be disputed that because of the accident the appellant who was an active practicing lawyer has become paraplegic on account of the injuries sustained by him. It is really difficult in this background to assess the exact amount of compensation for the pain and agony suffered by the appellant and for having become a lifelong handicapped. No amount of compensation can restore the physical frame of the appellant. That is why it has been said by courts that whenever any amount is determined as the compensation payable for any injury suffered during an accident, the object is to compensate such injury "so far as money can compensate" because it is impossible to equate the money with the human sufferings or personal deprivations. Money cannot renew a broken and shattered physical frame. "

Thus, looking to the age of applicant, disability affects normal activities. mobility and dignity, **so, it would be just and proper to awards Rs. 1,50,000/- towards loss of amenities.**

In view of the above referred discussion, the claimant is entitled for the following amount of compensation.

Sr. No.	Description	Amount (Rs.)
1	Future loss of income.	88,60,320/-
2	Actual loss of income.	1,50,000/-
3	Medical expenses.	10,13,727/-

4	Pain, shock and suffering	75,000/-
5	Special diet, attendant charges and transportation.	75,000/-
6	Loss of Amenities	1,50,000/-
7	**Total Amount of Compensation**	**1,03,24,047/-**

The claimant has prayed for compensation to the tune of Rs. 20,00,000/-. But The Motor Vehicles Act is considered as a beneficial and welfare legislation. The Hon'le Supreme Court of India, has repeatedly held in cases of Nagappa vs. Gurdayal Singh and Mona Baghel vs. Sajjan Singh Yadav that, technicalities of pleading should not obstruct the award of fair compensation. There is no legal restriction that prevents the Tribunal or the High Court from awarding a compensation amount that exceeds what was claimed in the petition, provided the higher amount is just and reasonable based on the evidence on record.

(21) Issue no. 2 (In M.A.C.P. No. 137/2018)

(21.1) The learned Advocate for the applicant has placed on record written submissions at Exh.19, wherein it has been submitted that at the time of the accident, the deceased was 43 years old. He has further submitted that at the time of the accident, the deceased, Hemrajbhai Virsangbhai Chaudhary, owned two cars, an Ecco car bearing registration No. GJ-06-KP-1407 and a Tavera car bearing registration No. GJ-02-BD-2978. One of the cars was being used on rent by employing a driver, while the other car was being driven by the deceased himself. It has also been submitted that the deceased owned agricultural land and was engaged in agricultural activities, and that he had given one of his shops on rent for an ATM. Thus, from all these occupations, the deceased was earning Rs. 40,000/- per month. The learned Advocate has further submitted that the deceased had four LIC policies bearing Nos. 878005090, 878005091, 872199995, and 870386596, for which he was paying a total annual premium of Rs. 31,306/-. The learned Advocate for the applicant has relied upon the following decisions in support of his case.

1. Decision of the Hon'ble Apex Court, rendered in the case of Geeta and others Vs. Manager, Bajaj Alianze General Insurance Co. Ltd., reported in 2021 A.C.J. 2681 (S.C)
2. Decision of the Hpn'ble Apex Court, rendered in the case of Sushila and others Vs. Ramswarup and others, in C.A No. 3247/2023 (S.C).
3. Decision of the Hon'ble Apex Court, rendered in the case of Kaladevi and others Vs. Bhagavandas Chauhan, reported in 2014 ACJ 2875.(S.C)
4. Decision rendered in the case of Urmila Vs. Raspal Kaur, reported in 2011 A.C.J. 2444.
5. Decision rendered in the case of New India Vs. Cargo Motors Ltd, reported in 2009 G.L.R (2), 974.

It has been further argued that the deceased, Hemrajbhai, owned two vehicles, was engaged in farming, and was also doing driving work. It is also submitted that the deceased was paying an annual LIC premium of Rs. 31,306/-. Therefore, it is prayed that the monthly income of the deceased be considered as Rs. 40,000/-.

(21.2) **Income**

It has been stated in the claim petition that at the time of the accident, the deceased was 43 years old. It is further stated that the deceased, Hemrajbhai Virsangbhai Chaudhary, owned two cars - an Ecco car bearing registration No. GJ-06-KP-1407 and a Tavera car bearing registration No. GJ-02-BD-2978. One of the cars was being used on rent by employing a driver, while the other was being driven by the deceased himself. It has also been stated that the deceased owned agricultural land and was engaged in agricultural activities, and that one of his shops had been given on rent for an ATM. Thus, according to the claim petition, the deceased was earning Rs. 40,000/- per month from all these occupations. It has further been stated that he was paying an LIC premium of Rs. 5,000/- per month and the monthly installment of the Tavera car at Rs. 10,000/- from his income.

The facts narrated in the claim petition have been reiterated in the examination-in-chief of applicant No.1 at Exh.12. In her cross-examination, applicant No.1 admitted that she had no documentary evidence to prove the income of the deceased. She further admitted that the agricultural income continues, and also admitted that the car belonging to her husband has been sold.

This tribunal has considered the pleadings of the parties, the oral and documentary evidence placed on record, as well as the submissions advanced by the learned advocates. The applicants have asserted in the claim petition that at the time of the accident, which occurred on 20/01/2018, the deceased, Hemrajbhai Virsangbhai Chaudhary, was 43 years old and was engaged in multiple occupations. It has been specifically pleaded that the deceased was the owner of two four-wheelers, namely, an Ecco car bearing registration No. GJ-06-KP-1407 and a Tavera car bearing registration No. GJ-02-BD-2978. And the supported documents are on record vide Exhs. 95 to 97. One of the vehicles was being operated on rent by employing a driver, whereas the other was driven by the deceased himself. It has further been stated that the deceased was also in possession of agricultural land and was earning regular income from agricultural activities. Additionally, it has been stated that the deceased had let out a shop premises for installation of an ATM and was receiving rental income therefrom. But for that no evidence is produced by the applicants. According to the applicants, the deceased was earning an amount of Rs. 40,000/- per month from all these sources combined. It has also been contended that the deceased was paying monthly LIC premiums and vehicle installments from his income, and therefore, his earning capacity was substantial.

The facts narrated in the petition have been reiterated by applicant No.1 in her examination-in-chief at Exh. 12. However, during her cross-examination, she admitted that no documentary evidence, such as income certificates, bank statements, rental agreements, or accounts relating to agricultural income, had been produced to substantiate the alleged monthly income of the deceased. She further admitted that the agricultural land continues to remain with the family even after the death of the deceased and that one of the cars owned by the deceased had been sold. Thus, the evidence on record clearly shows that although the deceased was engaged in certain income-generating activities, the applicants have not been able to establish the specific amount of income through any reliable documentary proof.

It is well-settled law that in the absence of cogent documentary evidence of income, the Tribunal is required to assess the notional income of the deceased on the touchstone of probabilities, keeping in view the nature of avocation, the socio-economic background of the deceased, and the year of the accident. The Hon'ble Supreme Court in *Ramachandrappa v. Royal Sundaram Alliance Insurance Co. Ltd.*, (2011) 13 SCC 236, has held that where the deceased was engaged in a recognized occupation but no documentary evidence is available, the Tribunal must make a realistic and pragmatic assessment of income and cannot adopt an unduly low figure. Similarly, in *Kirti & Anr. v. Oriental Insurance Co. Ltd.*, (2021) 2 SCC 166, the Apex Court reiterated that guesswork, if based on objective considerations, is permissible in determining income. The Supreme Court in *Hem Raj v. Oriental Insurance Co. Ltd.*, (2018) 15 SCC 654, has further observed that notional income should not be fixed at the lowest level when facts indicate that the deceased was gainfully employed.

In the present case, the deceased was admittedly possessing two vehicles, one of which was given on rent. He was also engaged in agricultural operations and receiving rental income. These factors clearly indicate that the deceased was not an unskilled labourer or unemployed person, but was actively involved in multiple earning activities. At the same time, the absence of documentary proof prevents the Tribunal from accepting the figure of Rs. 40,000/- per month as claimed by the applicants. Thus, a balanced and just approach is required. While assessing the income, the Tribunal is also required to bear in mind that the accident took place in the year 2018, and the notional income assessed by various High Courts and the Hon’ble Apex Court for that year typically ranges between Rs. 10,000/- to Rs. 12,000/- per month for an unskilled worker, and between Rs. 13,000/- to Rs. 15,000/- per month for skilled or semi-skilled occupations such as driving. Having regard to the nature of activities carried out by the deceased, his ownership of vehicles, engagement in agriculture, and overall socio-economic background, the Tribunal is of the view that the deceased belonged to a category higher than that of an unskilled labourer. Therefore, the income requires to be fixed at a figure above the minimum notional income applicable for the year 2018.

Accordingly, on an overall consideration of the evidence on record, the occupation and earning potential of the deceased, and the judicial principles laid down by the Hon'ble Supreme Court, this Tribunal finds it just, reasonable and proper to assess the monthly income of the deceased at Rs. 25,000/- per month at the time of the accident."

Thus, considering the income as stated by applicant No.1 in the claim petition as well as in her affidavit, and considering the fact that the deceased was doing driving work, owned two four-wheelers, was engaged in agricultural activities, and was paying LIC premiums, and further considering the year of the accident, **it would be just and proper to assess the monthly income of the deceased at Rs. 25,000/- at the time of the accident.**

(21.3) **<u>Age</u>**

In the claim petition and in the affidavit of the applicant filed in the form of examination-in-chief at Exh.- 12, the age of the deceased has been mentioned to be 43 years at the time of accident. In the Inquest panchnama the age of the deceased has been shown to be 42 years. In the P.M. Note, the age of the deceased has been shown to be 43 years. The Copy of the driving license of the date of birth of the the deceased has been shown to be 01/06/1974.

Thus, deceased was 43 years 7 months and 19 days old the time of accident **and therefore, multiplier of 14 is applicable.**

(21.4) Future Prospect

So far as addition towards future prospects is concerned, in view of the decision of Hon'ble Apex Court in the case of **National Insurance Co. Ltd. Vs. Pranay Sethi, reported in 2017 ACJ 2700 and** considering the fact that the deceased was 43 years 7 months and 19 days old the time of accident and the deceased was doing the work of driving means he was a self employed person at the time of the accident. **Therefore, it would be just and proper to add 25% towards future prospects to the actual income of the deceased.**

(21.5) Calculation of compensation :-

The monthly income of the deceased is assessed at Rs. 25,000/- p.m and therefore, after adding 25% towards future prospects, **it comes to Rs. 31,250/- p.m. [(Rs. 25,000/- (Monthly Income + Rs. 6,250/- (Future prospect)].** Considering the fact that deceased has two dependent, 1/3rd amount is required to be deducted towards personal expenses of the deceased and therefore, after deducting 1/3rd amount, i.e Rs. 10,417/- , the Loss of dependency would come to Rs. 20,833/- X 12 X 14 (Multiplier) = **Rs. 34,99,944/- (Rupees Thirty Four Lacs**

Ninety Nine Thousand Nine hundred and Forty Four Only).

Considering the recent decision of Hon'ble Apex Court rendered in the case of National Insurance Company Limited Vs. Pranay Sethi (Supra) & Ors., reported in 2017 ACJ 2700, **Rs. 1,33,100/-** ***(Incremental of 10% after every three years after 2017 is applied)*** **is awarded towards conventional head i.e Loss of estate, Loss of consortium and funeral expense.**

(21.6) The Breakup of the compensation is as under.

Calculation of actual loss

1.	Rs. 34,99,944	For Loss of Dependency
2.	Rs. 18,150/-	Towards Loss of Estate
3.	Rs. 18,150/-	For Funeral Expenses.
4.	Rs. 96,800/-	Loss of consortium (Rs. 40,000/- for each applicant)
5.	**Rs. 36,33,044/-**	**Total Compensation**

(22) Issue no. 2 (In M.A.C.P. No. 138/2018)

(22.1) It has been stated in the claim petition that the applicant sustained injuries on the right leg and left hand, as well as injuries on other parts of the body in the said accident. The aforesaid facts have been reiterated in the affidavit filed by the applicant in the form of examination-in-chief at Exh. 19. The treatment papers placed on record at Exh.- 99 to Exh.- 103 corroborate the factum of injuries.

(22.2) <u>DISABILITY</u>

Ld. Advocate Mr. S. P. Gupta for the applicant has placed on record the written submissions at Exh.22 and submitted that, considering the injuries sustained by the applicant, Dr. Tushar Modi issued a disability certificate, which has been placed on record at Exh.143. As per the said disability certificate, Dr. Tushar Modi has assessed 16% disability of the left hand and 30% disability of the right leg. He has further submitted that since the applicant sustained injuries to more than one body part, the disability of the body as a whole cannot be taken as half, but the *Cahsler formula* is required to be taken into consideration.

He has further submitted that in the case of <u>*Aredhyu Priya v. State Express Transport Corporation*, reported in 2020 A.C.J. 2159 (S.C.)</u>, the Hon'ble Supreme Court considered 50% future prospects in a case involving 31.1% disability and also awarded Rs. 1,50,000/- towards loss of comfort and loss of amenities, and Rs. 2,00,000/- towards pain, shock and suffering. He has further submitted that in the case of <u>*Madivallappa v. Maharashtra State Road Transport Corporation*, in C.A. No. 12009/2024</u>, it was observed that while computing compensation towards loss of future earning, future prospects should be taken into consideration, relying on the decision of the Hon'ble Supreme Court in the case of *Pranay Sethi*. He has submitted that, considering the above decisions, 40% future prospects are required to be taken into consideration while computing compensation.

The disability certificate of the applicant has been placed on record at Exh.-147, which shows that the applicant has suffered

16% permanent partial impairment of the left upper limb and 30% of the right lower limb.

Dr. Tushar P. Modi has given his deposition at Exh. 143, wherein he deposed that he is an M.S. (Orthopaedics) and has been practicing as an Orthopaedic Surgeon in Vadodara for the last 31 years. He stated that he examined Dr. Drashti Ashok Patel for the purpose of assessing permanent disability on 08/09/2018. He further stated that due to the vehicular accident dated 20/01/2018, Drashti Ashok Patel had sustained a fracture of the tibia and fibula of the right leg, and a fracture of the left shoulder and rib. She had taken treatment at Sterling Hospital, where an operation was performed, a rod was inserted in the right leg, and the fracture was fixed with a plate and screws. He also stated that due to the injuries sustained in the right leg, the patient cannot run.

On examination, he found that although the fracture of the right leg had united, the movement of the knee was restricted. Similarly, the fracture of the left rib had united, but the movement of the shoulder had become restricted. Considering all these aspects, he assessed the permanent disability at 16% for the left upper limb and 30% for the right lower limb as per the doctor's manual. He further stated that since the applicant had sustained injuries to multiple body parts, the disability cannot be considered as half, and therefore, the Cashler formula is required to be applied.

In his cross-examination, he denied the suggestion that the disabilities mentioned in the certificate produced at Exh. 147 as 16% and 30% could be reduced through physiotherapy treatment.

Ld. Advocate for the applicant has placed on record a pursis at Exh.- 179, declaring that Dr. Tushar P. Modi had issued a disability certificate assessing 16% disability of the left lower limb and 30% disability of the right lower limb. Dr. Tushar P. Modi has been examined at Exh.143, and in his cross-examination, he stated that it is not true that the disabilities mentioned in the certificate at Exh.- 147, i.e., 16% and 30%, can be reduced through physiotherapy treatment. It has further been mentioned in the pursis that, as per the Cashler Formula, the permanent disability of the body as a whole comes to 41%, and therefore, the applicant has no objection if the permanent disability of the body as a whole is considered at 41% for the purpose of computing compensation. The Ld. Advocate for the opponent–Insurance Company has made an endorsement “Seen.”

Ld. Advocate for the applicant has also placed on record the original letter issued by Dr. Tushar P. Modi below the document list at Exh.- 180 (Mark 180/1), regarding computation of permanent disability as per the Cashler Formula, wherein the permanent disability of the body as a whole is mentioned as 41%. A xerox copy of page No. 49 of the Cashler Formula has been placed on record below the documentary list at Exh.- 180 (Mark 180/2). Therefore, considering the aforesaid aspects, it would be just and proper to assess the permanent disability of the body as a whole **at 41% .**

(22.3) <u>INCOME.</u>

It has been stated in the petition that at the time of the accident, the applicant was studying in the third year of Physiotherapy in Karamsad Medical College. The aforesaid facts have been reiterated in the affidavit filed by the applicant at Exh.-19. In her cross-examination, she admitted that at the time of the accident, she was studying in the third year of Physiotherapy.

Ld. Advocate Mr. S. P. Gupta for the applicant has placed on record the written submissions at Exh. 22 and submitted that the applicant is a medical student. He has relied upon the following decisions in support of his submissions.

1. Decision of Hon'ble S.C In case of Yoshodam S. Vs. R.M.Reliance General Insurance Co. Ltd., reported in 2023 A.C.J. 605 (S.C.)
2. Decision of the Hon'ble S.C in case of Ashvinbhai Jayantilal Modi Vs. Ramkaran Ramchandra Sharma and others, C.A 8131/2014 and 8132/2014.
3. Decision of Hon'ble S.C In case of Bishnu Priay Panda Vs. Basanti Manjeri Mohanti and others, reported in 2023 , A.C.H,. 2393 (S.C).

He has stated that the accident took place in 2018 and that, at the time of the accident, the applicant was studying Physiotherapy. Therefore, the notional income of the applicant may be considered at Rs. 50,000/- per month, considering the above-cited decision of the Hon’ble Supreme Court.

In this petition, it is admitted that the, applicant was studying in the 3rd year of physiotherapy course from the college at the time of the accident. Ld. Advocate has argued to consider the applicant as a student of medical. But in India, a Physiotherapy student is *not* considered an MBBS student. Because, MBBS is a medical degree regulated by the National Medical Commission (NMC). Physiotherapy (BPT) is a separate professional course regulated by the National Commission for Allied and Healthcare Professions (NCAHP) (earlier by respective universities/state councils). MBBS doctors are licensed medical practitioners and can diagnose, prescribe medicines, and perform medical/surgical procedures. Physiotherapists are *allied health professionals* ; they can assess and treat musculoskeletal/neurological conditions through physical therapy, but cannot prescribe medicines or perform surgery. Physiotherapy is not equivalent to MBBS. Physiotherapists are not medical practitioners under the Medical Council regulations, though they are recognized as healthcare professionals. This Tribunal may recognise physiotherapy as a medical/health science course, but not equal to MBBS. For notional income assessment, some courts consider physiotherapy students as skilled professionals but still distinct from MBBS students.

Notional Income for Non-Earner / Student (Physiotherapy)

Courts often assign a *notional income* to students or non-earning claimants to account for their future earning potential. The Honb'le Supreme Court held that a student's notional income should not be equated to that of an unskilled worker. In MACT cases, Indian courts do not have a fixed statutory notional income for a physiotherapy intern. But based on recent High Court and Supreme Court trends, the notional income of a student who has completed BPT and is doing internship is generally taken as ₹15,000 to ₹25,000 per month, and in some cases even higher depending on evidence. A BPT graduate (even during internship) is considered a **skilled health-care professional**. Physiotherapists in private hospitals/clinics typically earn between **₹18,000–₹30,000 p.m.** as freshers. Courts tend to adopt an income slightly lower than a fully-qualified physiotherapist but higher than an unskilled worker.

Therefore, Considering that the injured was in the third year of BPT (Physiotherapy) and was about to complete her study, at the time of the accident, and keeping in view the earning potential of a qualified physiotherapist in the healthcare sector, it would be just and proper to assess applicant's notional income at Rs. 30,000/- per month. Therefore, considering the year of the accident and the nature of work, it would be just and proper to assess the monthly income of the applicant at Rs. 30,000/- .

Having regard to the aforesaid and year of accident, it would be just and proper **<u>to assess monthly income of the deceased at Rs. 30,000/- p.m at the time of accident.</u>**

(22.4) <u>AGE AND MULTIPLIER</u>

In the array of the petition, the age of the applicant is shown to be 21 years. In the medical certificate placed on record and issued by Sterling Hospital at Exh.- 99, the age of the applicant is also shown as 21 years. In the discharge summary placed on record at Exh.- 100, the age of the applicant is again shown as 21 years. The copy of the Aadhar card of the applicant has been placed on record at Exh.- 104, wherein the date of birth of the applicant is shown as 21/11/1996. Thus, the applicant was 21 years, 1 month, and 30 days old at the time of the accident. Therefore, the multiplier of 18 is applicable.

(22.5) Future Prospect

The another question arise before this Tribunal is that, whether the Applicant is entitled for Future Prospect in the calculation of total compensation or not ? In this regard this Tribunal has considered the ratio laid down by the Honb'le Supreme Court in the case of **Mohd. Sabeer VS. Regional Manager, U.P. State Road Transport Corporation, 2023 ACJ, 1.** And it was observed by the Honb'le Apex Court that,

' **FUTURE PROSPECTS**

17. The High Court has not applied the quantum for future prospect in the compensation granted. In its reasoning, the High Court has stated that the Income tax returns relied upon by the Appellant show that despite the injury the Appellant's income had subsequently increased and hence it cannot be said that there is a loss of future earnings.

18. It is a well settled position of law that in cases of permanent disablement caused by a motor accident, the claimant is entitled to not just future loss of income, but also future prospects. It has been reiterated by this Court in multiple instances that "just compensation" must be interpreted in such a manner as to place the claimant in the same

position as he was before the accident took place.

19. The accident that caused the injury took place on 12.06.2009. The acknowledgement of both the Income Tax Returns produced by the Appellant show that Tax Returns were till 31.03.2008 and 31.03.2009. Both the Income Tax Returns produced as proof of income were from before the accident took place, and hence the High Court's finding that the income of the Appellant has increased after the disability is incorrect.

20. It is also to be noted that even if the income of the Appellant had increased after the accident, it would not be enough grounds to disable the Appellant from claiming compensation for future prospect as the rise in income may be attributed to multiple other factors.

21. In light of National Insurance Company Limited V. Pranay Sethi and Others, the applicable 40% addition of future prospects will be given as compensation to the Appellant herein.

So, looking to the ratio held by the Honb'le Supreme Court in above mentioned case, the applicant is also entitled for the future prospect in compensation. The income of the applicant is considered as Rs. 30,000/- and as per the judgment of Pranay Sethi , 2017 (16) SCC 680, the applicant is entitled for 40 % addition of future prospects, as her age was 21 years at the time of the accident and she was studying in 3rd year of physiotherapy. Therefore, the total income of the applicant will be considered as Rs. 30,000/- plus 40 % future prospect Rs. 12,000/- and total Rs. 42,000/- will be considered for the purpose of calculating the compensation.

(22.6) <u>FUTURE LOSS OF INCOME</u>

Thus, the applicant is entitled to get Rs. 42,000/- x 12 x 18 x 41/100 = **<u>Rs. 37,19,520/- towards future loss of income.</u>**

(22.7) <u>Actual loss of income.</u>

Mukeshbhai Baldevbhai Shreemali, serving in Sterling Hospital, Vadodara, and a witness for the applicant, has been examined at Exh. 110. In his deposition, he stated that the applicant, Drashti Ashokbhai Patel, was admitted in Sterling Hospital. He brought a certified copy of the discharge summary, and as per the said report, Drashti Ashokbhai Patel was admitted to the hospital on 20/01/2018 and discharged on 25/01/2018. The said document has been exhibited at Exh. 115.

Dharmesh Devilal Pathidar has been examined at Exh. 151, wherein he deposed that he has been serving in Sterling Hospital for the last seven months as an M.R.D. Officer. He produced a copy of the certificate issued by the hospital at Mark 26/77, and as per the said certificate, Drashti Ashokbhai Patel was advised rest in the hospital for the period from 26/01/2018 to 04/03/2018.

The copy of the discharge summary issued by Sterling Addlite India Pvt. Ltd. to the applicant has been placed on record at Exh. 110 and Exh. 115, from which it appears that the applicant was admitted in the hospital on 20/01/2018 and discharged on 25/01/2018. A copy of the rest certificate issued to the applicant by Sterling Hospital has been placed on record at Exh. 155, and as per the said certificate, she was advised rest from 26/01/2018 to 04/03/2018.

Looking to the nature of the injuries, the applicant could not have worked for a period of approximately one month, therefore, **she is entitled to receive Rs. 30,000/- X 1 = Rs. 30,000/- towards actual loss of income.**

(22.8) <u>MEDICAL EXPENSES</u>

Ld. Advocate for the applicant has placed on record written submissions at Exh.22, wherein it has been stated that the applicant had incurred medical expenses of more than Rs. 3,50,000/- for the treatment taken at Sterling Hospital, and out of the said amount, she is having medical bills of Rs. 3,13,073/-, which are placed on record at Mark 26/89. It is further stated that out of the medical expenses of Rs. 2,99,123/-, she received Rs. 1,20,000/- under the mediclaim approved by M.D. India Healthcare Pvt. Ltd. However, since the applicant had paid the mediclaim premium separately, she is entitled to receive the entire amount incurred towards medical expenses due to the injuries sustained in the accident.

It has been stated in the affidavit of the applicant filed in the form of examination-in-chief at Exh. 19 that she had incurred medical expenses of more than Rs. 3,50,000/-, and she has placed on record the original medical bills amounting to Rs. 3,12,773/-. She has further stated that out of the medical expenses of Rs. 2,99,123/-, she received Rs. 1,20,000/- under the mediclaim approved by M.D. India Healthcare Pvt. Ltd.

The mediclaim bills of the applicant amounting to Rs. 3,13,073/- have been placed on record below Mark 26/89. As per the said medical bills, the applicant had incurred Rs. 3,13,073/- towards medical treatment due to the injuries sustained in the accident.

Mukeshbhai Baldevbhai Shreemali, serving in Sterling Hospital, Vadodara, and a witness for the applicant, has been examined at Exh. 116. In his deposition, he has stated that he brought the summary of the medical bill of Drashti Pratikbhai, which is produced at Mark 119/6, wherein the medical expenses are shown to be Rs. 2,99,123/-. The applicant was having a mediclaim policy, and under the said policy, the hospital received Rs. 1,20,000/- towards medical expenses, while the remaining amount was paid by the applicant. The said bill has been exhibited at Exh. 116.

It is pertinent to mention here that the applicant has also placed on record the medical bill of Rs. 2,99,123/- at Mark 26/89. Thus, the applicant has incurred total medical expenses to the tune of Rs. 2,99,123/-.

Ld. Advocate for the applicant has relied upon the decision rendered in case of **Satishkumar Rasiklal Doctor Vs. Baldevbhai Chhaganbhai Thakor, reported in 2006(0) GLHEL- HC 217214 and the New India Insurance Co. Ltd. Vs. Doly Satish Gandhi, reported in 2025 ACJ 1061** and submitted that claimant has received the amount of medical treatment under contract of insurance for which, he had paid premium and therefore, no deduction can be made from the amount received from the insurance company for medical treatment.

In the case of **Oriental Insurance Co. Ltd. Vs. Kokilaben, reported in 2015 (3) 2681,** it has been observed as under ;

4.11 Mr. *Nair, learned Counsel for the appellant, did contend that the medical expenses of Rs 2,04,305/-, which were already reimbursed in the medi-claim policy to the claimants, ought not to have been considered by the Tribunal for the purpose of awarding compensation.*

4.12 In our, view, the said contention should not detain us further since the Tribunal itself has considered one of the decision of this court in the case of Satishkumar Rasiklal Doctor Vs. Baldevbhai Chhaganbhai Thakor, reported in 2007 (14) GHJ: 2007 (1) GCD 727. We may further add that similar contention came to be considered by the Division Bench of this Court, wherein one of us (Jayant Patel J.) was a party in First Appeal No. 2303 of 2008 decided o 26/06/2012 (Oriental Insurance Co. Ltd. Vs. Bhakulabne Maheshbhai) and this court, in para 11 of the said decision, has observed as under

> *"Learned Advocate for the appellant also submitted that the claimant who had already received some amount under the Medi Claim Policy from another insurance Company is not entitled to receive amount towards the medical expenses from the insurer in the present case. We find that the decision of Hon'ble the Supreme Court in case of National Insurance Company Vs. Sebastian K. Jacob (supra) relied by him is on different facts and cannot be applied to the facts of the present case. In the said case, there were two difference Insurance Companies for two different vehicles involved in the accident and out of those two different Insurance Companies, the claimant had already received*

amount of medical expenses from one of the companies which was the insurer of one of the vehicles. In the present case, respondent No.1 has not received any amount of medical expenses either from the insurer of Maruti Van or from the G.S.R.T.C prior to the award of medical expenses passed by the Claims Tribunal. What was received by the claimant is the amount under her independent mediclaim policy, therefore, it cannot be said that the claimant is receive double amount under the same head. In fact, this Court in the case of Revaben wd/o. Nathubhai Mohanbhai Vs. Katibhai Narotttambhai Gohil, reported in 1994(2) GLR 1728 has settled this issue by holding that the tort-feasor is liable to pay damages for his tortious act cannot be permitted to take advantage of his own wrong. It is required to be mentioned that for mediclaim policy, separate premium is required to be paid any only then, a person is entitled to claim the amount incurred for medical treatment on the basis of such mediclaim policy, and therefore, what is being received under the mediclaim policy is an independent right other than the claim under the Motor Vehicles Act, and therefore, argument advanced by the learned Advocate for the applicant is devoid of any merits and stands rejected."

In the case of **Madhya Pradesh State Road Transport Corporation and another Vs. Priyank, reported in 200 ACJ 701,** it has been held that the claimant has received the amount of medical treatment under contract of insurance for which, he had paid premium and therefore, no deduction can be made from the amount received from the insurance company for medical treatment.

Having regard to the aforesaid decisions, the amount which has been disbursed in favour of the claimant under medical policy cannot be deducted from the total amount of medical expenses.

Therefore, considering the aforesaid aspects, the applicant is entitled to get **Rs. 2,99,123/- (Rupees Two Lakhs Ninety Nine Thousand One Hundred Twenty Three Only)** towards medical expense.

(22.9) COMPENSATION UNDER OTHER HEADS.

Having regard to the the nature of injuries and the year of accident, it would be just and proper **to award Rs. 75,000/- towards pain, shock and suffering and Rs.75,000/- towards attendant charges, transportation and special diet.**

(22.10) Loss of Amenities :

The another question which arises before this Tribunal is that, whether the present applicant is entitled to get the compensation under the head of Loss of Amenities ? For the determination of the above mentioned question, this court has taken the ratio laid down by the Supreme Court of India, in the case of **R.D. Hattangadi Vs. Pest Control (India) Pvt. ltd., ACJ 366 (SC)** in which case it was held by the Honb'le Supreme Court that,

"9. Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far non- pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain and suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters i.e. on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life.

10. It cannot be disputed that because of the accident the appellant who was an active practicing lawyer has become paraplegic on account of the injuries sustained by him. It is really difficult in this background to assess the exact amount of compensation for the pain and agony suffered by the appellant and for having become a lifelong handicapped. No amount of compensation can restore the physical frame of the appellant. That is why it has been said by courts that whenever any amount is determined as the compensation payable for any injury suffered during an accident, the object is to compensate such injury "so far as money can

compensate" because it is impossible to equate the money with the human sufferings or personal deprivations. Money cannot renew a broken and shattered physical frame. "

Thus, looking to the age of applicant, disability affects normal activities. mobility and dignity, **so, it would be just and proper to awards Rs. 1,00,000/- towards loss of amenities.**

In view of the above referred discussion, the claimant is entitled for the following amount of compensation.

Sr.No.	Description	Amount (Rs.)
1.	Future loss of income.	37,19,520/-
2.	Actual loss of income.	30,000/-
3.	Medical expenses.	2,99,123/-
4.	Pain, shock and suffering	75,000/-
5.	Special diet, attendant charges and transportation.	75,000/-
6.	Loss of amenities	1,00,000/-
7.	**Total Amount of Compensation**	**42,98,643/-**

The claimant has prayed for compensation to the tune of Rs. 8,00,000/-. But The Motor Vehicles Act is considered as a beneficial and welfare legislation. The Hon'le Supreme Court of India, has repeatedly held in cases of Nagappa vs. Gurdayal Singh and Mona Baghel vs. Sajjan Singh Yadav that, technicalities of pleading should not obstruct the award of fair compensation. There is no legal restriction that prevents the Tribunal or the High Court from awarding a compensation amount that exceeds what was claimed in the petition, provided the higher amount is just and reasonable based on the evidence on record.

(23) <u>LIABILITY</u>

In the issue No.1, it has been held that the **accident occurred due to the negligence of the driver of the truck i.e. opponent No. 1.** It appears from the copy of the policy placed on record at Exh.- 46 that opponent No.2 was the owner of the truck and the truck was insured with opponent No.3- the Insurance Company and the insurance policy was in force at the time of the accident. The Ld. Advocate for the opponent No.3- Insurance Company has not disputed the fact that the truck was insured with the opponent No.3 at the time of the accident. In so far as the opponent no. 4 and 5 are concerned, opponent No.4 is the driver-cum-owner (wife of the original driver-cum-owner of the Ecco car) of the Ecco Car bearing Registration No. GJ-06-KP-1407 and opponent No.5 is the insurance company of the Ecco Car. However, as held earlier, the opponent no.1 was solely negligent in causing the accident; therefore, opponents Nos. 4 and 5 are required to be exonerated.

In view of the aforesaid, opponent Nos.1, 2 and 3 are jointly and severally liable to make payment of the compensation to the claimants. **Therefore, Issue No. 2 is answered in the affirmative accordingly.**

(24) INTEREST

In view of the case of **Kalpanraj & Others Vs. Tamilnadu State Transport Corporation, 2015[2], SCC 764,** this Tribunal grants interest @ 9% per annum and award the amount from the date of petition till realization. Therefore, the claimant is entitled to get interest at the rate of 9% p.a from the date of filing the present claim petition. Therefore, I pass the following order.

: O R D E R :

1. The claim petitions are hereby allowed.
2. The claimant of M.A.C.P No. 133/2018 is entitled to recover the amount of **Rs. 23,46,552/- (Rupees Twenty Three Lakhs Fourty Six Thousand Five Hundred Fifty Two Only)** with proportionate cost and with interest @ **9%** per annum from the date of filing of the claim petition till its realization, from the opponent Nos. 1 to 3 jointly and severally.

3. The claimant of M.A.C.P No. 134/2018 is entitled to recover the amount of **Rs. 8,92,391/- (Rupees Eight Lakhs Ninety Two Thousand Three Hundred Ninety One Only)**

with proportionate cost and with interest @ **9%** per annum from the date of filing of the claim petition till its realization, from the opponent Nos. 1 to 3 jointly and severally.

4. The claimant of M.A.C.P No. 135/2018 is entitled to recover the amount of **Rs. 46,69,100/- (Rupees Fourty Six Lakhs Sixty Nine Thousand and One Hundred Only)** with proportionate cost and with interest @ **9%** per annum from the date of filing of the claim petition till its realization, from the opponent Nos. 1 to 3 jointly and severally.

5. The claimant of M.A.C.P No. 136/2018 is entitled to recover the amount of **Rs.1,03,24,047/- (Rupees One Crore Three Lakhs Twenty Four Thousand and Fourty Seven Only)** with proportionate cost and with interest @ **9%** per annum from the date of filing of the claim petition till its realization, from the opponent Nos. 1 to 3 jointly and severally.

6. The claimant of M.A.C.P No. 137/2018 is entitled to recover the amount of **Rs. 36,33,044/- (Rupees Thirty Six Lakhs Thirty Three Thousand Fourty Four Only)** with proportionate cost and with interest @ **9%** per annum from the date of filing of the claim petition till its realization, from the opponent Nos. 1 to 3 jointly.

7. The claimant of M.A.C.P No. 138/2018 is entitled to recover the amount of **Rs.42,98,643/- (Rupees Fourty Two Lakhs Ninety Eight Thousand and Six Hundred Fourty Three Only)** with proportionate cost and with interest @ **9%** per annum from the date of filing of the claim petition till its realization, from the opponent Nos. 1 to 3 jointly and severally.

8. The opponent Nos. 4 and 5 are hereby exonerated from its liability to pay the compensation.

9. Accordingly, the opponent Nos. 1 to 3 shall deposit the aforesaid amount of compensation together with interest and

proportionate costs in **Account No. 40746217906 with State Bank of India, District Court Branch, Vadodara [IFS Code – SBIN0018839 / Branch Code – 18839]** within a month from the date of receipt of judgment & award.

10. On deposit of the amount of compensation as noted herein-above, the opponent is directed to intimate this tribunal in a prescribed form via Email [Head- macp- vad].

11. The opponent Nos. 1 to 3 shall deposit the full amount of compensation and shall not deduct tax under Section 194-a of Income Tax on the interest awarded by this Tribunal as per law laid down by Hon'ble Division Bench in case of The Oriental Ins. Co. Ltd. vs. Chief Commissioner of Income Tax (TDS), R/Sp. Civil Application No. 4800/2021, dated 05/04/2022.

12. The required Deficit Court Fees, if any, be deducted first.

13. Principal Amount of interim / ad-hoc compensation awarded under Section 140 of M.V. Act, if any, shall be deducted from finally awarded compensation**.**

14. Order for apportionment and disbursement shall be made after deposit of awarded amount of compensation by the opponent.

15. Decree/award be drawn accordingly in the above petition.

Signed and Pronounced in open Court today on this 1st day of January, 2026

Date: 01/01/2026

Place: Vadodara

(A.M.Shah)-P.A

[B. K. Dasondi]
JUDGE
M.A.C. Tribunal (Auxi.) &
11th Additional District Judge,
Vadodara.
Code GJ 00924