सत्यमेव जयते

BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL (MAIN)
BHAVNAGAR

M.A.C.P. No.146 / 2023

Exh.88

Legal heir and representative of
deceased Rahulbhai Rajeshbhai Chauhan
Aged : 24 Years, Occupation : Diamond polishing,
Jadiben Rajeshbhai Kanjibhai
Address : Opp. Bhagwaneshwar Temple,
Airport Road, Mafatnagar,
Dr. Narwani walo Khancho, Subhashnagar,
Bhavnagar.

.. .. **APPLICANT**

Vs.

TATA TRUCK NO. GJ – 32 – T – 8757 :

DRIVER :

1. **Laxmanbhai Karshanbhai Vegda**
Aged : Adult, Occu. : Driving,
Address : New Plot, Bhaduri,
Tal. Maniya Hatina, Dist. Junagadh.

OWNER :

2. **Ashwinbhai Arshibhai Jotva**
Aged : Adult, Occu. : Transport,
Address : Haadri, Tal. Veraval, Dist. Gir Somnath.

INSURANCE COMPANY :

3. **TATA AIG General Insurance Co. Ltd.**
Address : Arihant Complex, Unit no. 301 and 304,
Third Floor, Tagore Road, Besides Bharat Travels,
Virani Complex, Rajkot.

.. .. **OPPONENTS**

M.A.C.P. No.147 / 2023

1. **Khushalbhai @ Jigar Bharatbhai Mali**
Aged : 24 years, Occu. : Diamond polishing.
(As the injured claimant died on 25.04.2025 but as the death date was shown as 10.05.2023 the amendment was carried out as per order passed below Exh.37)
Harshaben Bharatbhai Mali
Aged : 42 years, Occu. : Household work,
Addres : Opp. Bhagwaneshwar Temple,
Airport Road, Mafatnagar,
Dr. Narwani walo Khancho, Subhashnagar,
Bhavnagar.

.. .. **APPLICANT**

Vs.

TATA TRUCK NO. GJ – 32 – T – 8757 :

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2. **Ashwinbhai Arshibhai Jotva**
Aged : Adult, Occu. : Transport,
Address : Haadri, Tal. Veraval, Dist. Gir Somnath.

INSURANCE COMPANY :

3. **TATA AIG General Insurance Co. Ltd.**
Address : Arihant Complex, Unit no. 301 and 304,
Third Floor, Tagore Road, Besides Bharat Travels,
Virani Complex, Rajkot.

MOTORCYCLE NO. GJ – 04 – DF – 8826 :

OWNER :

4. **Gautambhai Sureshbhai Parmar**
Aged : 23 years, Occu. : Service,
Address : Subhashnagar,
Dr. Narwani walo Khancho, Pachas Wariya,
Bhavnagar.

INSURANCE COMPANY :

5. **Go Digit General Insurance Co.**
Address : The City Center, Office No. 615 to 626,
Sixth Floor, Old Amrapali Cinema,
Besides Underbridge, Raiya Road, Rajkot.

.. .. **OPPONENTS**

Appearance :

Mr. A.H.Solanki, Learned Advocate for the claimants
Ex – parte against the opponent nos.1 and 2
Mr. J.U.Thakkar, Learned Advocate for the opponent no.3
Mr. K.J.Shukal, Learned Advocate for the opponent no.5

-: C O M M O N J U D G M E N T :-

1. Both these claim petitions are filed by the applicants under Section 166 of the Motor Vehicles Act, 1988 ('the M.V.

Act') arising out of one and the same vehicular accident dated 10.05.2023, for recovery of compensation along with costs and interest at the rate of 12% per annum from the date of the petition till realization, as against the opponents.

1.1 M.A.C.P. No. 146 / 2023 is a claim arising out of the death of Rahulbhai Rajeshbhai Chauhan, who was riding the Motorcycle bearing registration No. GJ - 04 - DF - 8826 at the time of the accident. M.A.C.P. No. 147 / 2023 is a claim arising out of the injuries sustained by Khushalbhai @ Jigar Bharatbhai Mali, who was travelling as a pillion rider on the said Motorcycle.

1.2 It is pertinent to note that both the claim petitions have arisen out of the same accident and the evidence is recorded in M.A.C.P. No. 146 / 2023, treating it as the main case. Hence, considering the law laid down by the Hon'ble Gujarat High Court in the case of New ***India Assurance Com. Ltd. V/s. Rajivkumar Omprakash Sultaniya, passed in First Appeal No. 2460 of 2021, dated 28/10/2021***, these claim petitions arising out of the same accident are ordered to be decided by this common judgment.

2. Brief facts of the present claim petitions are that on 10.05.2023 at about 05.00 in the early morning, the deceased Rahulbhai Rajeshbhai Chauhan of M.A.C.P. No.

146 / 2023, along with his friends Khushal @ Jigar Bharatbhai Mali, Ajitbhai M. Jatpara and Gautambhai Sureshbhai Parmar, had left Bhavnagar for the darshan of the Meladi Mata Temple situated at Anghad and Malataj. It is the case of the applicants that the deceased Rahulbhai was riding the Motorcycle bearing registration No. GJ - 04 - DF - 8826 belonging to his friend Gautambhai Sureshbhai Parmar, and that Khushal @ Jigar was sitting behind him as a pillion rider. It is further the case of the applicants that when they reached the Bochasan overbridge on the Bagodara – Vasad Highway, the driver of the Tata Truck bearing registration No. GJ - 32 - T - 8757 drove his Truck at an excessive speed, rashly and negligently, in a manner endangering human life, and dashed the said Motorcycle from behind, as a result of which the deceased Rahulbhai sustained serious injuries and died on the spot, and Khushal @ Jigar sustained injuries on the head and on other parts of the body.

2.1 It is further the case of the applicant of M.A.C.P. No. 147 / 2023 that Khushal @ Jigar was first taken to the Hospital at Karamsad and thereafter to Sir T. Hospital, Bhavnagar, where he remained as an indoor patient from 13.05.2023 to 17.05.2023, however, he passed away during the pendency of the claim petition, and that she has been joined as his heir.

2.2 The opponents no.1 and no.2 of both the claim petitions, being the driver and the owner of the Truck, did not remain present, and the claim petitions have proceeded ex-parte as against them.

2.3 The opponent no.3 of both the claim petitions, being Tata AIG General Insurance Co. Ltd., the insurer of the Truck, has appeared through its learned advocate and filed its written statement. It has denied the age, occupation and income of the deceased and of the injured, and has stated that the same are required to be proved by cogent evidence. Its principal contention is that the Truck bearing registration No. GJ - 32 - T - 8757 was never involved in the accident in question. It has contended that the FIR was lodged against an unknown vehicle, that the number of the Truck came to light long thereafter, and that the Truck has been falsely involved at the instance of the complainant only because it carried insurance, and that the charge-sheet has been wrongly filed against opponent no.1. It has further contended that the deceased Rahulbhai was riding the Motorcycle without a driving licence and without a helmet, and that he was himself solely negligent. On these pleadings it has prayed that the claim petitions be dismissed as against it.

2.4 The opponent no.4 of M.A.C.P. No. 147 / 2023, being the owner of the Motorcycle, has not contested the matter on merits.

2.5 The opponent no.5 of M.A.C.P. No. 147 / 2023, being Go Digit General Insurance Co. Ltd., the insurer of the Motorcycle, has appeared through its learned advocate and filed its written statement and its written notes of arguments. It has contended that the accident occurred solely due to the negligence of the driver of the Truck and that the Motorcycle and its insurer are therefore liable to be exonerated. It has further contended that Khushal @ Jigar died during the pendency of the petition from a cause unconnected with the accident, and that there is no nexus between the accidental injuries and his death. It has further contended that the rider of the Motorcycle was not holding any driving licence at the time of the accident, that this amounts to a breach of the terms and conditions of the policy and of Sections 3 and 5 of the M.V. Act, and that it is therefore not liable to indemnify the insured. It has lastly contended that an order of 'Pay and Recover' cannot be passed after the amendment of the M.V. Act with effect from 01.04.2022. Relying on the above it is prayed to dismiss the claim petition against it.

3. In view of the pleadings of the parties, the following issues are required to be determined in the main claim petition viz. No.146 / 2023.

1. Whether the applicant of M.A.C.P. No. 146 / 2023 proves that the deceased Rahulbhai Rajeshbhai Chauhan died, and whether the applicant of M.A.C.P. No. 147 / 2023 proves that Khushal @ Jigar Bharatbhai Mali sustained injuries, on account

of the rash and negligent driving of the Truck bearing registration No. GJ - 32 - T - 8757 by opponent no.1 ?

2. Whether the applicants are entitled to compensation ? If yes, of what amount and from whom ?

3. What order and award ?

4. My findings to the above Issues are as under:-

1. In the negative, as per the reasons recorded hereinbelow.

2. As per the final order.

3. As per the final order.

-: R E A S O N S :-

ISSUE NO.1 & 2 :-

5. Heard the learned advocates for the parties and perused the record. I have also considered the written arguments filed on behalf of the applicants and on behalf of the opponent no.3 and the opponent no.5.

6. The claimants have produced the following oral as well as documentary evidence on record :

:: ORAL EVIDENCE ::

Exh. No.	Particulars
23	Affidavit of examination in Chief of the claimant – Jadiben Rajeshbhai Chauhan (In MACP No. 146 / 2023)
24	Affidavit of examination in Chief of the claimant – Harshaben Bharatbhai Mali (In MACP No. 147 / 2023)
30	Affidavit of examination in Chief of one witness examined by the claimant namely Manilal S. Asari, P.I., Navapura Police Station, Vadodara City
34	Affidavit of examination in Chief of one witness examined by the claimant namely Ghanshyamsinh Dehabhai Parmar, P.S.I., Surat City, Region – 4, Traffic Department

:: DOCUMENTARY EVIDENCES FILED IN THE CLAIM PETITIONS ::

Exh. No.	Particulars
MACP No. 146 / 2023	
35	Death certificate of deceased
36	Copy of the school leaving certificate of deceased
37	Copy of the adhar card of the deceased
38	Copy of the adhar card of the claimant
39	Copy of the relevant portion of the bank passbook of the claimant
40	Copy of the PAN card of the claimant
41	Copy of the death certificate of the husband of the claimant
61	Inquest panchnama
62	Panchnama of the offending vehicle Truck involved in the accident
63	Copy of the treatment certificate issued by

	CHC, Borsad, Dist. Anand of the claimant of MACP No. 147/2023
64	Copy of the MLC issued by Sir T. Hospital, Bhavnagar of the claimant of MACP No. 147/2023
65	Copy of the post – mortem note
66	Copy of the Accident Report Form issued by RTO, Anand
71	Charge - sheet
MACP No. 147/ 2023	
29	Copy of the MLC
35	Copy of the panchnama of the scene of accident
42	Copy of the panchnama of the Truck involved in the accident
43	Copy of the adhar card of claimant
44	Copy of the bank passbook of the claimant
45	Copy of the PAN card of the claimant
46	Copy of the discharge card of the original injured claimant
47	Copy of the driving license of the opponent no.1
48	Copy of the R.C.Book of the Truck involved in the accident
49	Copy of the vehicle particulars issued by State Transport Department with respect to the Truck involved in the accident
50	Copy of the permit issued to the Truck involved in the accident by the Transport Department
51	Copy of the certificate of fitness issued in respect of the Truck involved in the accident by the State Transport Department
52	Copy of the policy particulars of the Truck involved in the accident
53	Copy of the R.C.Book of the Motorcycle involved in the accident
54	Copy of the policy particulars of the Motorcycle involved in the accident
55	Copy of the ration card of the claimant

56	Copy of the adhar card of the claimant
57	Copy of the PAN card of the claimant
58	Copy of the death certificate of Khushalbhai (original claimant) who died during the pendency of the claim petition
59	Copy of the death certificate of the husband of the claimant
60	Copy of the bank passbook of the claimant
72	Copy of the FIR
DOCUMENTARY EVIDENCE PRODUCED BY OPPONENT NO.5	
75	Copy of the policy issued to the Motorcycle involved in the accident
76	Copy of the Notice sent to the legal heirs / representatives of deceased under the provisions of Section 134 of the M.V.Act
77	Copy of the Notice sent to the opponent no.4 under the provisions of Section 134 of the M.V.Act
78	Copy of the status report issued by Postal Department with respect to the status of the notice sent to the opponent no.4
80	Copy of the reply given by the Regional Transport Officer, Bhavnagar to the production application of the opponent no.5

ISSUE NO.1:

7. At the outset, it has to be borne in mind that in a claim petition under Section 166 of the M.V. Act, negligence is required to be proved only on the touchstone of the preponderance of probability and not beyond reasonable doubt. The above referred ratio is laid down by the Hon'ble Supreme Court in the cases of **Bimla Devi V/s. H.R.T.C., reported in AIR 2009 SC 2819, and Parmeshwari Devi V/s.**

Amir Chand, reported in 2011 (11) SCC 635. At the same time, the burden of proving that the accident was caused by the rash and negligent driving of the person from whom compensation is claimed lies squarely upon the claimant. A claim under Section 166 is founded on fault. If the claimant fails to establish a tort at the hands of the opponents, no compensation can follow.

8. The case of both the applicants rests entirely upon the involvement of the Tata Truck bearing registration No. GJ - 32 - T - 8757. If that Truck is not shown to have been involved in the accident, the foundation of both the claim petitions, as pleaded, disappears. The evidence on this point must therefore be examined with care.

9. The FIR is produced at Exh.72. It was lodged by Gautambhai Sureshbhai Parmar, who is the owner of the Motorcycle. He was not an eye-witness to the accident. His own version in the FIR is that he and Ajitbhai were travelling separately on another vehicle, that they had turned back towards Bhavnagar after a puncture, and that they came to know of the accident only through a telephone call. In the FIR, the offending vehicle is described only as "some unknown vehicle". There is no description whatsoever of the type of that vehicle — whether it was a two-wheeler, a four-wheeler or a Truck. No registration number is mentioned. No accused is named.

10. The applicant of M.A.C.P. No. 146 / 2023, Jadiben, has filed her affidavit of examination-in-chief at Exh. 23. In her cross-examination she has admitted that she was not present at the place of the accident, and that she cannot say how and in what manner the accident occurred. She has admitted that in the police complaint produced by her there is no mention of the type of the offending vehicle. She has admitted that in the panchnama of the place of the incident produced by her, the Truck of opponent no.1 is not shown as lying at the spot, and that there are no marks of its tyres. She has admitted that she has no personal knowledge as to how the number of the Truck came to light after the police complaint and the panchnama, or as to who disclosed that number. The applicant of M.A.C.P. No. 147 / 2023, Harshaben, has filed her affidavit at Exh. 24, and she has made identical admissions in her cross-examination. Thus, neither applicant is in a position to speak to the manner of the accident, and neither can support the involvement of the Truck from her own knowledge.

11. The panchnama of the place of offence is produced at Exh.35 (In MACP No. 147/2023). It was drawn on 10.05.2023 itself, between 16.00 and 16.30 hours. A careful perusal of the said panchnama is instructive. It records a dried blood-like stain on the white strip of the left lane on the northern side of the road. It records dried blood-like marks on the wall of the bridge and on the road at a distance of about five feet to the north. It records that

the Motorcycle was found lying near the wall of the bridge, without any number plate at the front or at the rear, with the petrol tank dented, the steering bent, the front head light and the front bumpers on both sides broken, and the front wheel broken and completely detached. It is further stated that on verifying the registration number of the Motorcycle by its chesis number it was found that the registration number of the said Motorcycle is GJ – 04 – DF – 8826. It records that nothing was seized from the spot. Most significantly, it records that on minute examination, on account of the passing to and fro of vehicles, no noteworthy marks were found such as could be recorded.

11.1 What is conspicuous by its absence from Exh.35 is any material of any kind pointing to a second vehicle. The Truck was not found at the spot. There are no tyre marks of any Truck. There is no transfer of paint of any other vehicle upon the Motorcycle. There is no debris attributable to any other vehicle. There is nothing at all in the panchnama drawn on the very day of the accident, at the very place of the accident, to connect any Truck with this occurrence.

12. The panchnama of the Truck is produced at Exh. 42. It was drawn in the compound of the Borsad Rural Police Station. It records the Tata Truck, the tarpaulin covering and the ash loaded beneath it, and a broken black plastic strip near the bumper on the conductor side. It expressly records that on seeing the rear part of the said Truck, no damage or

other noteworthy mark is found, and that no other damage, or blood, or other stain marks are seen on the Truck. If a fully laden Truck had struck a Motorcycle from behind with such force as to throw it into the air and kill its rider on the spot, one would ordinarily expect some mark, some damage, or some trace to be found upon the Truck. There is none.

13. The first investigating officer, Manilal S. Asari, has been examined at Exh. 30. He has deposed that he was serving as the Police Station Officer at Borsad Rural Police Station at the relevant time, that he drew the panchnama of the place of offence on 10.05.2023, and — this is important — that **during his investigation no fact came to light in respect of the vehicle involved in the accident**. He was not cross-examined on behalf of the opponent no.3.

14. The second investigating officer, Ghanshyamsinh Dehabhai Parmar, has been examined at Exh. 34. In his examination-in-chief he has deposed that after the investigation came to him, he studied the CCTV installed at the toll booth, that the suspect Truck GJ - 32 - T - 8757 came to notice, that he contacted its owner, that the Truck was brought to the police station on its return from Ankleshwar, that on interrogation the driver admitted having caused the accident, that the panchnama of the Truck was drawn, that the F.S.L. officer and the R.T.O.

officer were called, and that the driver was arrested and released on bail.

14.1 On the face of it, this examination-in-chief supports the involvement of the Truck. However, the cross-examination of this very witness demolishes the foundation of every one of these assertions. In his cross-examination he has admitted as follows :

(a) That before he took over the investigation, the number of the said Truck had nowhere come to light in the investigation.

(b) That on the day he took over the investigation, he recorded the statements of five persons, and that it was in those statements that the number of the Truck, the name of its driver, and his address were mentioned for the first time.

(c) That he gave no written application at the toll booth for obtaining the CCTV footage.

(d) That he obtained no CCTV footage in the course of the investigation, and that he cannot produce any.

(e) That there is no document in the investigation papers from which it would follow that his predecessor had made any attempt to obtain the CCTV footage.

(f) That he did not record the statement of the person in whose control the toll booth CCTV was, and did not include him in the charge-sheet.

(g) That he did not produce the CCTV clip separately in the charge-sheet.

(h) That a computerised entry is made whenever a vehicle passes a toll booth, and that the toll paid is fed into the computer, but that he included no receipt or other document to show that the said Truck had passed the toll booth before or after the time of the accident.

(i) That the name and address of the owner of the Truck were obtained from the internet and that the owner was called by telephone, and that the name of the driver was obtained from the owner, and that no documentary support in respect of that communication is on the charge-sheet.

(j) That whatever is done during an investigation has to be noted in the police station diary, and that he made a note as to from where he obtained the number of the Truck but that he is **not ready to produce the case diary**.

(k) That no name of any accused is disclosed in the complaint, and that the notice under Section 41(A) does not state from where the name and details of opponent no.1 were obtained by them.

(l) That where an unknown vehicle causes an accident and runs away, and a person thereafter presents himself as its driver and discloses the number, the mobile location of that person at the time of the incident has to be obtained in order to verify whether he was really there; that a circular to that effect has been issued; that the accused disclosed his mobile number to him; and that he did **not** obtain the mobile location, and cannot produce the CDR details.

(m) That he did not investigate whether the accused had himself sustained any injury, or whether his vehicle had suffered any damage, or whether it had been repaired.

(n) That after arresting the accused he did not take him to the place of the incident and get him identified by persons working at the shops and hotels in the vicinity.

(o) That he included no circumstantial evidence with the charge-sheet to show that the said Truck had passed from the place of the accident at the time of the accident.

(p) That in the panchnama of the Truck no damage, no blood stains and no other marks are found.

(q) That when he arrested the accused, he informed his superior officer that the complaint spoke of an unknown vehicle, and that he thereafter gave no intimation as to how the accused came to be traced.

15. Thus, the officer who claims to have traced the Truck through CCTV footage has not produced that footage, never applied for it in writing, and has not examined the person in whose custody it was. The officer who claims that the Truck passed that way has produced no toll record, though he admits that a computerised entry of every passing vehicle exists. The officer who was required by circular to verify the presence of the accused through his mobile location has not done so, although the accused himself furnished his mobile number. The officer who says he recorded in the case diary the source of the Truck number refuses to produce the case diary. Beyond the bare assertion of this witness, there is not one document, not one independent witness, and not one circumstance on this record which connects the Truck bearing registration No. GJ - 32 - T - 8757 with this accident.

16. At this stage, the learned advocate for the applicants has strenuously urged that the FIR, the police papers and the charge-sheet at Exh.71, having been filed against opponent no.1 after due investigation, are sufficient to establish the involvement of the Truck. I am unable to accept that submission on the facts of this case.

16.1 The Hon'ble Supreme Court, in National Insurance Company Ltd. V/s. Chamundeswari & Ors., Civil Appeal No. 6151 of 2021 (arising out of S.L.P. (C) No. 4705 of 2019), decided on 01.10.2021, has held that if any evidence before the Tribunal runs contrary to the contents of the First Information Report, the evidence recorded before the Tribunal has to be given weightage over the contents of the First Information Report. It has further been held therein that whether the driver of a vehicle was negligent or not admits of no straitjacket formula, and that each case is to be judged having regard to the facts of that case and to the evidence on record.

16.2 The principle which emerges is that the police papers are not a substitute for proof. Where oral evidence is available on the record of the Tribunal, the Tribunal is not required to rely solely upon the FIR, the investigation papers and the charge-sheet, and it is at liberty to decide the matter upon the oral evidence which has come before it.

16.3 Applying that principle to the present case, the position is this. The FIR itself speaks only of an unknown vehicle. The charge-sheet undoubtedly names opponent no.1. But the very officer who filed that charge-sheet has stepped into the witness box, and on his own admissions in cross-examination he has no material at all to support the involvement which the charge-sheet asserts. A charge-sheet is only as good as the investigation behind it. Once the investigating officer himself concedes that he holds no CCTV footage, no toll record, no CDR, no mobile location, no forensic link, no identification and no circumstantial evidence, and once he declines to produce the very case diary in which he claims to have recorded the source of the Truck number, the charge-sheet standing alone cannot be permitted to discharge the burden which the law casts upon the claimant.

16.4 It is further relevant that the certificate of the Sir T. Hospital, Bhavnagar, produced at Exh. 64, being the certificate of the admission of Khushal @ Jigar on the very day of the accident, records in the history of the accident that the injury was caused by a fall from a two-wheeler. That contemporaneous entry, made before any question of involving any Truck could have arisen, is consistent with what the spot panchnama shows and inconsistent with the case now sought to be made out.

17. In view of the foregoing discussion, I hold that the applicants have failed to prove that the Tata Truck bearing

registration No. GJ - 32 - T - 8757 was involved in the accident dated 10.05.2023. I further hold that the applicants have failed to prove that the accident was caused by any rash and negligent driving on the part of opponent no.1.

18. The next question which necessarily follows is how, then, the accident occurred. On the material discussed above, only one answer is possible. The Motorcycle was found lying near the wall of the bridge. The blood marks are found upon the wall of the bridge and upon the road. The damage to the Motorcycle is at its front, the head light broken, the front bumpers broken, the front wheel broken and detached, the steering bent. No second vehicle is shown to have been involved. The contemporaneous hospital history speaks of a fall from a two-wheeler. It is admitted by the applicant of M.A.C.P. No. 146 / 2023 that the deceased Rahulbhai was riding without a helmet. It stands proved on the record, from the reply of the Regional Transport Officer, Bhavnagar, produced at Exh. 80, that no driving licence stood in his name. The Motorcycle bore no number plate at the front or at the rear. In these circumstances, the only inference which can reasonably be drawn is that the deceased Rahulbhai lost control over the Motorcycle which he was riding and dashed against the wall of the bridge, and that the accident occurred solely on account of his own negligence. I hold accordingly. Issue No. 1 is therefore answered in the negative.

LIABILITY ASPECT OF M.A.C.P. No. 146 / 2023 :

19. In M.A.C.P. No. 146 / 2023, the applicant Jadiben has claimed compensation from opponent no.1, the driver of the Truck, opponent no.2, the owner of the Truck, and opponent no.3, the insurer of the Truck. The insurer of the Motorcycle is not a party to this claim petition at all.

20. As held hereinabove, the Truck was not involved in the accident, and the deceased Rahulbhai was himself solely negligent in causing it. The present claim petition is filed under Section 166 of the M.V. Act. It is a claim founded on fault. It was therefore incumbent upon the applicant to plead and prove a tort at the hands of the opponents from whom she seeks compensation. She has not done so. On the contrary, the negligence stands established at the door of the deceased himself.

21. In this context, a useful reference may be made to the judgment of the Hon'ble Delhi High Court in Surender Kumar Arora & Anr. vs. Dr. Manoj Bisla & Ors., MAC Appeal No. 408 of 2009, decided on 03.06.2010. In that case, the claim petition filed under Section 166 of the M.V. Act was dismissed by the Tribunal on the ground that the claimants had failed to prove that the accident had occurred due to the fault and negligence of the respondent, and the Hon'ble High Court upheld that dismissal. It was held that a claimant cannot claim compensation without

even alleging and proving a tort against the respondent, and that a claimant cannot approbate and reprobate by taking one stand at one stage and a different stand before the Tribunal. It was further held that where the claimant had a sufficient opportunity to prove negligence and failed to do so, the dismissal of the claim petition was the appropriate course.

22. The ratio of the said judgment applies with full force to M.A.C.P. No. 146 / 2023. The applicant has been unable to establish any tort at the hands of opponents no.1 and no.2. Since no liability can be fastened upon the driver and the owner of the Truck, no question arises of fastening any liability upon opponent no.3, the insurer of the Truck, whose liability is only to indemnify its insured. Further, the deceased having been found solely negligent, and this being a petition under Section 166 of the M.V. Act, the applicant cannot recover compensation in respect of an accident brought about by the fault of the deceased himself. ***M.A.C.P. No. 146 / 2023 is therefore devoid of merits and is liable to be dismissed.***

<u>QUANTUM ASPECT OF M.A.C.P. No. 147 / 2023 :</u>

23. The position of the applicant of M.A.C.P. No. 147 / 2023 stands on a different footing. Khushal @ Jigar Bharatbhai Mali was not the rider. He was travelling as a pillion rider on the Motorcycle. He had no control whatsoever over its management. Whatever negligence has been found is the

negligence of the rider, and none of it can be attributed to the pillion rider. He is therefore entitled to be compensated for the injuries sustained by him.

24. Before turning to the quantum, one contention of the opponent no.5 requires to be dealt with. It has been contended that Khushal @ Jigar died during the pendency of the claim petition and that there is no nexus between the accidental injuries and his death.

24.1 This contention must be accepted, and indeed it is not seriously in dispute. The applicant Harshaben, in her cross-examination on behalf of opponent no.5, has stated that her son died on 25.04.2024, and the witness has voluntarily stated that he committed suicide by consuming poisonous medicine. She has, in terms, **admitted that the death of her son was not caused on account of the accident**. No post-mortem note has been produced. There is nothing on the record to connect the death with the injuries sustained on 10.05.2023, which were sustained nearly a year earlier and in respect of which he had been discharged after five days of indoor treatment.

24.2 I therefore hold that there is no nexus between the accidental injuries sustained by Khushal @ Jigar and his subsequent death. It follows that M.A.C.P. No. 147 / 2023 does not become a fatal claim. It remains a claim for the injuries sustained, and the applicant, as his heir, can be awarded compensation only under that head.

25. As regards the injuries, the case pleaded is that Khushal @ Jigar sustained an injury on the crown of the head with bleeding, a fracture of the left hand at the wrist, in respect of which an operation was performed and rods were fixed, a burn on the left thigh caused by contact with the silencer, and abrasions and blunt injuries. He was taken by 108 to the Hospital at Karamsad and thereafter to Sir T. Hospital, Bhavnagar, where he was an indoor patient from 13.05.2023 to 17.05.2023. It is claimed that an expense of Rs.25,000/- was incurred and that he remained bedridden for three months.

26. However, the state of the evidence is unsatisfactory. In her cross-examination, the applicant has admitted that she has **not produced any disability certificate** to show that her son suffered any permanent disability, and has admitted that she has **not produced the bills of the medical expenses** of the treatment of her son. She has also admitted that no documentary proof of the income of her son has been produced in the matter. The claim of income of Rs.20,000/- per month, or of Rs.30,000/- per month as is stated in the written arguments, therefore remains wholly unsubstantiated. In the absence of a disability certificate, no loss of future earning capacity can be assessed. In the absence of bills, no actual expenditure can be quantified. In the absence of income proof, no loss of earnings for the period of treatment can be worked out on any accepted footing.

27. That said, the fact that Khushal @ Jigar sustained injuries in the accident and underwent indoor treatment for five days is borne out by the treatment certificates at Exh. 63 and Exh.64. Compensation cannot be denied altogether merely because strict proof is wanting. Taking into consideration the nature of the injuries, the short period of indoor treatment, the absence of any proof of permanent disability, the absence of any medical bills, and the fact that the death of the injured is unconnected with the accident, I am of the opinion that it would be just, fair and reasonable to award a lump sum amount of **Rs. 25,000/-** to the applicant of M.A.C.P. No. 147 / 2023 under all heads.

LIABILITY ASPECT OF M.A.C.P. No. 147 / 2023 :

28. In M.A.C.P. No. 147 / 2023, opponents no.1, no.2 and no.3 are respectively the driver, the owner and the insurer of the Truck. As held hereinabove, the Truck was not involved in the accident. No liability can therefore be fastened upon opponents no.1, no.2 and no.3 in this claim petition, and they are liable to be exonerated.

29. Opponent no.4 is the owner of the Motorcycle, and opponent no.5 is its insurer. The accident having been caused by the negligence of the rider of the Motorcycle, who was riding it with the permission of opponent no.4, opponent no.4 is vicariously liable for the tort of the rider.

30. So far as opponent no.5 is concerned, the insurance policy of the Motorcycle is produced at Exh. 54. It is a **Digit Two-Wheeler Package Policy**, and not an Act-only policy. The period of the third party liability cover runs from 31.07.2022 to 30.07.2023, and the accident of 10.05.2023 falls squarely within it. The basic third party liability premium stands paid.

30.1 The deceased Khushal @ Jigar was neither the owner nor the rider of the Motorcycle. He was travelling as a pillion rider. In such a situation he is to be treated as a third party within the meaning of the M.V. Act. No material has been produced to show that he was travelling unauthorisedly or in violation of the terms of the policy. It is well settled by the Hon'ble Supreme Court in the case of **National Insurance Co. Ltd. V/s. Balakrishnan & Anr., reported in (2013) 1 SCC 731**, that where the policy is a comprehensive or package policy and not merely an Act policy, the risk of an occupant travelling in the vehicle stands covered, and the insurance company is liable to indemnify the insured in respect of such a third party claim.

30.2 In view of the above settled legal position, and the policy being in force on the date of the accident, opponent no.5 would ordinarily be liable along with opponent no.4 to satisfy the award.

31. However, the learned advocate for the opponent no.5 has raised a defence under Section 150 of the M.V. Act, and that defence must now be examined.

32. The learned advocate for the opponent no.5 submitted that at the time of the accident the rider of the Motorcycle, the deceased Rahulbhai Rajeshbhai Chauhan, was not holding any valid and effective driving licence. He submitted that the Drivers Clause of the policy at Exh.54 permits any person including the insured to drive, but only provided that such person holds an effective driving licence at the time of the accident. He further submitted that Section 3 of the M.V. Act prohibits any person from driving a motor vehicle in a public place unless he holds an effective driving licence, and that Section 5 prohibits an owner from causing or permitting any person who does not satisfy Section 3 to drive the vehicle. He submitted that opponent no.4 handed over the Motorcycle to an unlicensed rider without even knowing his licence status, which amounts to a wilful breach of the terms and conditions of the policy, and that opponent no.5 is therefore not liable to indemnify the insured.

33. The learned advocate for the opponent no.5 further submitted that the accident occurred on 10.05.2023, and that as per the amended M.V. Act which came into effect from 01.04.2022, the pre-amended Section 149 has been re-numbered as Section 150. He argued that the amended

Section 150 no longer contains the provision relating to the principle of 'Pay and Recover', and that the Tribunal can therefore no longer direct the insurance company to pay the compensation to the claimant and thereafter recover the same from the driver and the owner of the offending vehicle.

34. Per contra, the learned advocate for the applicant submitted that even if the rider was not holding a valid and effective driving licence, the deceased Khushal @ Jigar was a third party, and that the insurance company remains bound to satisfy the award in his favour and may thereafter recover the same from the owner. In support of this contention, reliance was placed on the judgment of the Hon'ble Supreme Court in **National Insurance Co. Ltd. V/s. Swaran Singh & Others, reported in (2004) 3 SCC 297.**

35. I have heard the learned advocates for the respective parties on the above referred issue.

36. On the first limb, the material on record is as under.

36.1 The opponent no.5 caused a summons to be issued to the Regional Transport Officer, Bhavnagar. The reply of the Regional Transport Officer, Bhavnagar, is produced at Exh.80. It bears the seal of the Licensing Authority, Bhavnagar. It states that on a search made on the parivahan.gov.in website in respect of the vehicle driver Rahulbhai Rajeshbhai Chauhan, having date of birth

31.01.1999, no licence holder was found in the Bhavnagar R.T.O.

36.2 The opponent no.5 also issued notices dated 12.01.2026, calling upon the applicant of M.A.C.P. No. 146 / 2023 and the opponent no.4, being the owner of the Motorcycle, to produce a true copy of the valid and effective driving licence of the deceased Rahulbhai Rajeshbhai Chauhan as it stood at the time of the accident. The postal receipt evidencing the despatch of the said notices is on record. No driving licence has been produced in answer to those notices by anybody, at any stage of this proceeding.

36.3 The opponent no.4, being the owner of the Motorcycle, has not stepped into the witness box and mentioned anything in this respect.

36.4 It is significant that at no stage has it been the case of the applicant, or of the opponent no.4, that the deceased Rahulbhai held a driving licence issued by any other licensing authority. The deceased was a resident of Bhavnagar. His home Regional Transport Office is the natural place at which such a record would exist, and the Regional Transport Officer, Bhavnagar, has certified that no such record exists. Neither the applicant nor the owner has come forward with any material to the contrary, although they were expressly called upon to do so.

36.5 In this connection, a reference may usefully be made to the judgment of the Hon'ble Supreme Court in United India Insurance Co. Ltd. V/s. Gian Chand, which has been relied upon by the opponent no.5 itself. It has been held therein that where the insured did not step into the witness box to prove his case, an adverse inference has necessarily to be drawn against him to the effect that the vehicle had been handed over by him to be driven by an unlicensed driver. Opponent no.4 in the present matter has chosen to remain away from the witness box.

36.6 Taking all the above circumstances cumulatively, I hold that the opponent no.5 has proved that at the time of the accident the rider of the Motorcycle was not holding any driving licence to ride the said Motorcycle, and that opponent no.4 permitted him to do so. The opponent no.5 has thus proved the defence available to it under Section 150 of the M.V. Act.

37. That brings me to the second limb, namely the contention that after the amendment no order of 'Pay and Recover' can be passed.

37.1 It is not in dispute that the accident occurred on 10.05.2023. It is also not in dispute that with effect from 01.04.2022 the provisions contained in Section 149 of the M.V. Act have been amended and re-numbered as Section 150 with certain modifications and omissions. It is also not in dispute that by virtue of the said amendment, the proviso to sub-section (4) of the unamended Section 149, which provided for the principle of 'Pay and Recover', has been omitted.

37.2 For ready reference, the text of the proviso to sub-section (4) of the unamended Section 149, as well as the text of the amended Section 150, are reproduced hereinbelow :

Unamended M.V. Act, 1988 — Section 149(4) :

> *"Where a certificate of insurance has been issued under sub-section (3) of section 147 to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured thereby by reference to any conditions other than those in clause (b) of sub-section (2) shall, as respects such liabilities as are required to be covered by a policy under clause (b) of sub-section (1) of section 147, be of no effect.*
>
> *Provided that any sum paid by the insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue only of this sub-section shall be recoverable by the insurer from that person."*

Amended M.V. Act, 2019 — Section 150(4) :

> *"Where a certificate of insurance has been issued under sub-section (3) of section 147 to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured thereby, by reference to any condition other than those in sub-section (2) shall, as respects such liabilities as are required to be*

> *covered by a policy under clause (b) of sub-section (1) of section 147, be of no effect."*
>
> 38.3 A bare perusal of the above referred provisions clearly indicates that the proviso to sub-section (4) of Section 149 of the unamended M.V. Act has been omitted. In this backdrop, the ancillary issue which arises for determination by this Tribunal is :
>
> *"whether, in a situation where the Insurance Company has established a valid defence under Section 150 of the M.V. Act, the Tribunal is still empowered to direct the Insurance Company to pay compensation to the claimant and subsequently recover the same from the driver and / or owner of the offending vehicle ?"*

38. The above referred issue is no longer *res integra*. It has been answered by the Hon'ble Madras High Court in the case of Branch Manager, SBI General Insurance V/s. Muthulakshmi, reported in 2025 ACJ 1925, wherein, after considering a catena of decisions including the ratio laid down by the Hon'ble Supreme Court in National Insurance Co. Ltd. V/s. Swaran Singh (supra), it has been held that the language employed in Section 149 prior to the amendment and in Section 150 after the amendment clearly indicates that the right of a claimant to receive compensation from the insurance company in the first instance remains unaffected by the *inter se* rights and liabilities arising out of the contract between the insurance company and the owner of the vehicle. It has further been held that the legislative intent was never to withdraw the

protection and relief available to third party victims under the earlier provision, and that on the contrary the object behind the amendments to the M.V. Act was to ensure immediate financial relief to victims of motor accidents, and not to create a situation where such victims are left remediless or are compelled to run from pillar to post. It has been held that the principle of 'Pay and Recover' continues to govern the field, as it advances the social welfare purpose of the legislation by protecting the rights of third parties. Relying upon the binding precedent of Swaran Singh (supra), it has been categorically held that notwithstanding the omission of the proviso to sub-section (4) of Section 149 in the amended Act, the said principle still holds good, and that even in cases where the accident occurs after 01.04.2022 and the insurance company successfully establishes a defence under Section 150 of the M.V. Act, the Tribunal can still direct the insurance company to pay the compensation to the claimant and thereafter recover the same from the driver and / or owner of the offending vehicle.

38.1 It has further been held by the Hon'ble Madras High Court that the proviso to Section 149(4) was merely clarificatory and declaratory in nature, that its application was restricted to the contingency contemplated under sub-section (4) of Section 149, and that the deletion of the said proviso does not abrogate the statutory liability of the insurer under sub-section (1) of Section 150 of the Act to satisfy the award in respect of third party victims.

38.2 The view taken in the case of SBI General Insurance V/s. Muthulakshmi (supra) has been reiterated by the Hon'ble Madhya Pradesh High Court in the case of Cholamandalam MS G.I. Ltd. V/s. Munni Bai, reported in 2025 ACJ 821, and by the Hon'ble Punjab and Haryana High Court in the case of National Insurance Company V/s. Satbir, reported in 2026 ACJ 463, wherein it has been held that in spite of the amendment in the M.V. Act by way of insertion of Section 150, the ratio laid down in the case of Swaran Singh (supra) still holds the field.

39. In view of the aforesaid discussion, I hold that the opponent no.5 has successfully established a valid defence under Section 150 of the M.V. Act and is therefore ordered to be exonerated from liability. However, in the light of the ratios laid down by the Hon'ble High Courts referred to hereinabove, and the deceased Khushal @ Jigar being a third party, the opponent no.5 is directed to pay the awarded amount of compensation to the applicant in the first instance. Thereafter, the opponent no.5 shall be at liberty to recover the said amount from opponent no.4, being the owner of the Motorcycle.

39.1 It may be noted that the rider of the Motorcycle, whose breach it was, is himself the deceased of M.A.C.P. No. 146 / 2023 and is not a party to M.A.C.P. No. 147 / 2023. The right of recovery can therefore operate only against opponent no.4, who permitted him to ride the Motorcycle.

INTEREST :

40. The applicant of M.A.C.P. No. 147 / 2023 has prayed for interest at the rate of 12% per annum. The learned advocate for the opponent no.5 has submitted that interest should not exceed 6% per annum. At this juncture, I have sought guidance from the judgment of the Hon'ble Constitution Bench of the Hon'ble Supreme Court in the case of National Insurance Company V/s. Pranay Sethi, reported in 2017 (16) SCC 680, wherein the Hon'ble Supreme Court has allowed interest at the rate of 9% per annum. Hence, I hold that the applicant is entitled to interest at the rate of 9% per annum.

41. Issue No. 2 is therefore answered accordingly, and the following final order is passed in the interest of justice.

-: O R D E R :-

(1) The M.A.C.P. No. 146 / 2023 is hereby dismissed.

(2) The M.A.C.P. No. 147 / 2023 is partly allowed.

(3) The M.A.C.P. No. 147 / 2023 is dismissed as against opponents no.1, no.2 and no.3, who are hereby exonerated.

(4) The applicant of M.A.C.P. No. 147 / 2023 is entitled to recover the amount of Rs. 25,000/- (Rupees Twenty Five Thousand only) from opponent no.4, along with proportionate costs and interest at the rate

of 9% (Nine Percentage) per annum from the date of filing the claim petition till the amount is realized.

(5) The opponent no.5 having proved its defence under Section 150 of the M.V. Act stands exonerated. However, the opponent no.5 is directed to deposit the awarded amount along with interest and costs before this Tribunal within 30 days, and is thereafter at liberty to recover the same from opponent no.4 by executing this award.

(6) Out of the amount deposited, deficit court fees, if any, and the amount of interim relief, if any, be deducted first.

(7) The amount of compensation shall be paid to the applicant of M.A.C.P. No. 147 / 2023 by way of Account Payee cheque only.

(8) The copy of this judgment shall be kept in M.A.C.P. No. 147 / 2023.

Award be drawn accordingly.

Pronounced in open Tribunal today on this **22nd** day of **July, 2026.**

Date : 22.07.2026. **(H. S. MULIA)**
Place : Bhavnagar. Chairman, M.A.C.T. (Main)
Bhavnagar.
UNIQUE ID CODE NO. GJ00915

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