Instituted on	26 / 02 / 2009
Registered on	10 / 08 / 2015
Decided on	27 / 05 / 2021
Duration	Y M D
	12 03 01

BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL (AUXI.), SURAT AT BARDOLI

M.A.C.P. No. 412 of 2015

With

M.A.C.P. No. 413 of 2015

With

M.A.C.P. No. 414 of 2015

(Old M.A.C.P. Nos. 91 of 2009, 92 of 2009 & 93/2009)

Exh.___

[1] M.A.C. PETITION NO.412/2015

Petitioners:

1. **Renukaben Pramodkumar Trivedi,**
Aged about 29 years, Occup. : Household work,
Residing at Parshottamnagar, House no.24,
Shashtri road, Bardoli, Tal.Bardoli, Dist.Surat.

2. **Naitik Pramodkumar Trivedi,**
Aged about major, Occup. : study,
Resident **:** As above.

3. **Minor Dhruv Pramodkumar Trivedi,**
Aged about 9 years, Occup. : study,
Resident **:** As above.

4. **Minor Prachi Pramodkumar Trivedi,**
Aged about 3 years, Occup. : nothing,
Resident **:** As above.

5. **Shantaben Ambalal Trivedi,**
Aged about 60 years, Occup. : Household work,
Resident **:** As above. **....** **APPLICANTS**

(Applicant no.1 is guardian of minor applicants no.3 & 4).

V E R S U S

1. **Fakir Mahmad Bhayu Sukha Khan,**
aged about 42 years, Occup.Driving,
Resi. of village Mutheta, Tal.Punahana,
Dist.Gundgao, State - Hariyana.

2. **Asgar Rujdar Kha,**
aged about major, Occup.Business,
Resi. of village Malab, Tal.Nuh,
Dist.Gundgao, State - Hariyana.

3. **Bajaj Allianz General Insurance Co. Ltd.**
Address : Meghmayur Plaza, Upper First Floor,
Opp.Jani Farsan, Parlepoint, Surat... .. **OPPONENTS**

[2] M.A.C. PETITION NO.413/2015

Petitioners:

1. **Tinaben Thakorbhai Rathod,**
Aged about 28 years, Occup. : Household work,
Resident of Naher faliya, Opp.near Alankar Talkies,
Bardoli, Tal.Bardoli, Dist.Surat.

2. **Ankit Thakorbhai Rathod,**
Aged about 19 years, Occup. : nothing,
Resident **:** As above.

3. **Minor Sejal Thakorbhai Rathod,**
Aged about 17 years, Occup. : study,
Resident **:** As above.

4. **Gulbiben Dhanjibhai Rathod,**
Aged about 49 years, Occup. : Household work,
Resident **:** As above. **....** **APPLICANTS**

(Applicant no.1 is guardian of minor applicant no.3).

V E R S U S

1. **Fakir Mahmad Bhayu Sukha Khan,**
aged about 42 years, Occup.Driving,
Resi. of village Mutheta, Tal.Punahana,
Dist.Gundgao, State - Hariyana.

2. **Asgar Rujdar Kha,**
aged about major, Occup.Business,
Resi. of village Malab, Tal.Nuh,
Dist.Gundgao, State - Hariyana.

3. **Bajaj Allianz General Insurance Co. Ltd.**
Address : Meghmayur Plaza, Upper First Floor,
Opp.Jani Farsan, Parlepoint, Surat.

4. **Renukaben Pramodkumar Trivedi,**
Aged about 29 years, Occup. : Household work,
Resident of Parshottamnagar, House no.24,
Shashtri road, Bardoli, Tal.Bardoli, Dist.Surat.

5. **The New India Assurance Co. Ltd.**
Address : Tirupati Plaza, A wing, First floor,
Opp.Collector office, Nanpura, Surat... .. **OPPONENTS**

[3] M.A.C. PETITION NO.414/2015

Petitioners:

1. **Paresh @ Harish Bhikhabhai Rathod,**
Aged about 20 years, Occup. : labour work,
Resident of Naher faliya, Opp.near Alankar Talkies,
Bardoli, Tal.Bardoli, Dist.Surat.

VERSUS

1. **Fakir Mahmad Bhayu Sukha Khan,**
aged about 42 years, Occup.Driving,
Resi. of village Mutheta, Tal.Punahana,
Dist.Gundgao, State - Hariyana.

2. **Asgar Rujdar Kha,**
aged about major, Occup.Business,
Resi. of village Malab, Tal.Nuh,
Dist.Gundgao, State - Hariyana.

3. **Bajaj Allianz General Insurance Co. Ltd.**
Address : Meghmayur Plaza, Upper First Floor,
Opp.Jani Farsan, Parlepoint, Surat.

4. **Renukaben Pramodkumar Trivedi,**
Aged about 29 years, Occup. : Household work,
Resident of Parshottamnagar, House no.24,
Shashtri road, Bardoli, Tal.Bardoli, Dist.Surat.

5. **The New India Assurance Co. Ltd.**
Address : Tirupati Plaza, A wing, First floor,
Opp.Collector office, Nanpura, Surat... .. **OPPONENTS**

Appearance :

Mr. R.C. Mahindrakar,	Learned Advocate for the Applicants.
Mr. P.H. Sabnani,	Learned Advocate for the opponent no.3.
Mr. B.P. Modi,	Learned Advocate for the opponent no.5.
	None for Opponent No.1, 2 and 4

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

[1] The above group of petitions is emanating from the same unfortunate accident which occurred on 19-12-2008 between the vehicles involved in the accident. The petitions have been preferred by the applicants under Section 166 of the Motor Vehicles Act, 1966.

[1.1] **MACP No.412/2015** is preferred by the applicants for compensation of Rs.27,00,000/- along with interest at the rate of 18 % and costs for the losses suffered by the applicants.

[1.2] **MACP No.413/2015** is preferred by the applicants for the compensation of Rs.8,00,000/- along with interest at the rate of 18% and costs for the injuries sustained and losses suffered by the applicant.

[1.3] **MACP No.414/2015** is preferred by the applicants for the compensation of Rs.5,00,000/- along with interest at the rate of 18% and costs for the losses suffered by the applicants.

[2] As the factum of the accident narrated in all the petitions is same and the offending vehicles involved in the accident are also same and all the petitions have been tried and proceeded together and they are adjudicated by this common Judgment.

[3] The factual matrix involved in the case are as under :

[3.1.1] In **M.A.C.P. No. 412/2015,** it is the case of the applicant that, deceased Pramodkumar was husband of applicant no.1, father of applicants no.2 to 4 and son of applicant no.5. It is further submitted that on 19-12-2008, the deceased Pramodkumar was going to Vadodara from Bharuch on National Highway No.8 from the sim of village Bharthana in Maruti Van No.GJ-5-N-2397 and in the said Maruti-Van, two other persons namely Thakorbhai and Pareshbhai were also going. Deceased Pramodkumar was driving the said Maruti-Van carefully on left side of the road and following all the traffic rules and at that time, a truck bearing registration No. RJ-5G-4055 owned by opponent no.2 and driven by opponent no.1 came in very rash, negligent and in a manner endangering human life and dashed with the said Maruti-Van and as a result of which, the deceased Pramodkumar sustained serious injuries and died. In that said accident, passenger Thakorbhai also died and Pareshbhai has was sustained serious injuries. The said accident was occurred due to negligence of opponent no.1 – Truck Driver.

[3.1.2] It is the case of the applicants that, the said accident has occurred due to negligence of opponent no.1 Driver of Truck in respect of which an offence has been registered before Karjan Police Station.

[3.1.3] It is the case of applicant that at the time of accident the deceased was 33 years old and was earning Rs.2,57,196/- yearly after deducting all expense by doing the business of catering on occasion of marriages in the business name and style of Shri Mota Kelvani Mandal. It is submitted that the deceased had got serious injuries and he was clever, intellectual, healthy and if he will alive, then he can get growth in business. It is further submitted that the applicants incurred expense of Rs.10,000/- for treatment and funeral ceremony and transportation of deceased. It is submitted that, after the demise of deceased who was only earning member in the family, the financial condition has become worst of the applicants, who are dependents of the deceased and hence, for the economic loss, mental shock, transportation etc. suffered by the applicants due to demise of deceased in vehicular accident, applicants have constrained to prefer the present petition for compensation against the opponents.

[3.2] In **MACP No.413/2015**, has been preferred by the applicant who was going in the same Maruti-Van and going to the same place and during the way the above mentioned accident took place place and in the said accident, Thakorbhai sustained serious injury and died. It is the case of the applicants that deceased Thakorbhai was husband of applicant no.1, father of applicants no.2 & 3 and son of applicant no.4.

[3.2.1] It is the case of the applicant that at the time of accident was 30 years old and was earning Rs.3,000/- per month by working in catering business of deceased Pramodkumar at Bardoli. It is further submitted that the applicants incurred expense of Rs.10,000/- for treatment and funeral ceremony and transportation of deceased. It is submitted that, after the demise of deceased who was only earning member in the family, the financial condition has become worst of the applicants, who are dependents of the deceased and hence, for the economic loss, mental shock, transportation etc. suffered by the applicants due to demise of deceased in vehicular accident, applicants have constrained to prefer the present petition for compensation against the opponents.

[3.3] **MACP No.414/2015** has been preferred by the applicant who was going in the same Maruti-Van and going to the same place and during the way the above mentioned accident took place place. It is the case of the applicant that, in the said accident the applicant had sustained serious injuries.

[3.3.1] It is the case of the applicant that at the time of accident was 20 years old and was earning Rs.3,000/- per month by working in catering business of deceased Pramodkumar at Bardoli. Due to accident, he sustained injury on various part of the body and sustained fracture on right shoulder. He incurred expense of food, transportation and attendant charges of Rs.10,000/-. He has got permanent disability and cannot do his work easily. Therefore, applicant has constrained to prefer the present petition for compensation against the opponents.

[4] Upon the presentment of the petition, the notices have been issued upon the opponents and same have been duly served, the opponent no.1, 2 and 4 have not appeared and not filed written statement.

[5] The opponent no.3 filed written statement in all MACPs vide Exh.20, Exh.28 and Exh.28 respectively, wherein it is stated that the claim petition is not maintainable, claimants have not acquired any legal right and any legal cause of action to file such claim petition. The claim is highly excessive, misconceived and unjust. All the facts of petition is denied in toto by the opponent. It is further submitted that at the relevant time period the alleged truck No. RJ-5G-4055 did not hold valid fitness and permit to ply on the road and hence, the driver of the said truck was driving the truck in contravention of the MV Act, 1988 and on the part of driver, it is clear breach of terms and conditions of the policy and hence, the liability of the present replying opponent ceases to exist. The opponent seeks protection u/s.147 and 149 of MV Act. It is further submitted that as per sec.158(6) of MV Act, 1988, it is a mandatory duty of the concerned police station to forward all the relevant documents to the concerned insurer within 30 days from the date of the information of the occurrence of the accident but the Karjan police station failed to forward the documents and not complied with the statutory demand. It is further submitted that looking to the FIR and other police papers, the deceased driver of Maruti Van was driving his Van without having valid and effective driving license and therefore, deceased himself thereby has violated the provision of MV Act. Therefore, Insurance company is not liable to pay compensation. It is further submit that the accident happened due to the sole negligence of driver of GJ-05-N-2397 Maruti Van i.e. the deceased himself. The real fact is that it was night time and one side of the road from the divider was closed from Vadodara towards Surat side as the work was in progress in the year 2008 and only one track was working and therefore, the truck driver was driving his truck on his correct side of the road and the deceased Maruti Van driver drove his Maruti Van at a full speed and while he was over taking another ongoing vehicle, he could not control himself and dashed with the incoming Truck insured with the replying opponent Insurance Company, which caused the accident in which the Maruti Van Driver sustained grievous injuries and died on the spot. Alternatively, it is submitted that the deceased was himself guilty of contributory negligence. It is further submitted that the defence of contributory negligence is available and can be pleaded and proved by the opponent. It is submitted that though the Maruti Van is a smaller vehicle, it has caused the accident and Maruti Van driver was negligence and responsible for accident hence, the present opponent is not liable to pay any compensation to the claimants. The claimants must prove age, occupation and income of deceased as well as the claimants. It is submitted that the income of the deceased cannot be calculated more than Rs.36,000/- p.a. in petition no.412/2015 and Rs.2000/- p.a. in petition no.413/2015 and 414/2015, as there is no evidence produced on record.

[5.1] The opponent no.5 Insurance company has filed written statement in MACP No.413/2015 vide **Exh.29** and in MACP No.414/2015 vide **Exh.31, (**written statement of both MACPs are same and so discussed together), wherein, it is submitted that no cause of action arise against opponent no.5. Further, it is submitted that the claim petition is vague and incomplete in material particulars and it is frivolous and untenable under the law and it is not maintainable in law in its present form against opponent no.5. The claim petition is barred by the principles of estoppels, waiver and acquiescence. It is submitted that the compensation claimed by the petitioner in the claim petition against different heads does not bear any legal, equitable and reasonable basis and is highly exorbitant, therefore, petitioners are not entitled for any amount and are put to strict legal proof of the same in legal manner. The petition filed is bad in law for mis-joinder and non-joinder of parties and liable to dismiss. The opponent does not aware of the criminal proceeding launched in the above matter and does not admit the narration made in the petition relating to the manner in which the accident is described to have been taken place. The occurrence and the alleged involvement of the petitioner/deceased in the accident are denied in toto. It is further submitted that as per section 134(c) of M.V. Act 1988, it is mandatory duty of the insured/ opponent no.4 to furnish the information of particulars of policy, date, time and place of accident, particulars of person died in the accident, name of the driver and particulars of his driving license in writing to the insurer/opponent no.5, but, the Insured/opponent No.4 had not complied with the said mandatory provisions enumerated in MV Act. Further, it is submitted that as per well established provisions of section 158 (6) of the MV Act, it is mandatory duty of the concerned police officer, after registering the accident taken place and offences committed within the jurisdiction of concerned police station, shall forward all the relevant documents regarding the vehicular accident involving death or bodily injuries to any person, within 30 days from the date of recording of such information to the concerned claim Tribunal and to the concerned Insurer and the owner of the offending vehicle, in turn, the owner within 30 days thereafter on receipt of such report, shall forward the same to such claims Tribunal and insurer and as the owner of the insured vehicle, the insured/opponent no.4 has failed to comply with the statutory provision of MV Act, therefore opponent no.5 is not liable to pay any compensation and present petition is liable to be dismissed due to non compliance of mandatory provision. The said opponent seeks protection under the provision of section 147, 148 and 149 of MV Act, 1988. It is further submitted that the petition be directed to produce the relevant documents including driving license and registration certificate, permit and fitness certificate etc. of the insured vehicle. It is submitted that Government registered case record like FIR, charge-sheet, MVI report, PM report/MLC report etc. and other necessary document required in the case may be produced for proper adjudication of the claim, otherwise, opponent no.5 shall not be stand liable in law to satisfy the award, if any. Further, it is submitted that if it is found that the said vehicle was insured with the opponent no.5, then also, the liability of the opponent no.5 as an insurer will be governed as per the terms and conditions of the policy and subject to the compliance of section 64 VB of Insurance Act 1938 and also subject to exception and limitation of policy and subject to verification of RC Book,permit and fitness certificate and valid and effective driving license. It is submitted that the opponent no.5 is not liable to pay any compensation unless and until it is proved that at time of accident the person at the wheel/opponent no.4 was having valid and effective driving license to drive such vehicle and the vehicle was road-worthy to ply. It is further submitted that the claim petition does not reveal nor produce any documentary evidence about the validity of the driving license of the accused driver at the time of accident. Hence, at this juncture, it is presumed that driver of the insured vehicle has no valid and effective driving license and was not qualified for holding or obtaining such driving license and further has not justified the requirement of rule 3 of Central Motor Vehicle Rules, 1989, at the relevant time of accident. Further, it is submitted that the owner of the alleged insured vehicle i.e. opponent no.4, in spite of knowing the same willfully handed over the vehicle to the driver. Thus, insured was guilty of negligence and failed to exercise reasonable care in manner of fulfilling the condition of policy, regarding the use of vehicle by duly and effective licensed driver. It is further submitted that adequate care and caution was not taken by the owner for verifying the genuineness of license held by driver. Further, it is submitted that opponent no.5 is not liable to pay any compensation unless and until it is proved that at the time of accident involved vehicle GJ-05-N-2397 having valid registration certificate. The opponent no.5 denied all about the alleged accident and the entire petition in general as it is not within the knowledge and so, petition is bound to prove them all in strict legal form. The opponent no.5 has denied the facts of petition, age, income, legal heir of deceased, expense and so the petitioner is to prove the same in legal form. In any view of the matter, if the Hon'ble Tribunal come to the conclusion that there was even slight negligence on the part of opponent no.5, then, the liability should be decided on the principle of composite/contributory negligence.

[6] In this petition, following issues have been framed by the Tribunal at Exh.92 in MACP No.412/2015 : -

I S S U E S

(1) Whether the applicants prove that deceased died in the vehicular accident occurred due to rash and negligent driving of the offending vehicle ?

(2) Whether the applicants are entitled to get the amount of compensation as claimed in petition ? If yes, what amount and from whom ?

(3) What order and award ?

[6.1] My findings on the above issues are as under :-

(1) Affirmative.

(2) Affirmative, As per final order.

(3) As per final order.

[7] In this petition, following issues have been framed by the Tribunal at Exh.93 in MACP No.413/2015 : -

<u>I S S U E S</u>

(1) Whether the applicants prove that deceased died in the vehicular accident occurred due to rash and negligent driving of the offending vehicle ?

(2) Whether the applicants are entitled to get the amount of compensation as claimed in petition ? If yes, what amount and from whom ?

(4) What order and award ?

[7.1] My findings on the above issues are as under :-

(1) Affirmative.

(2) Affirmative, As per final order.

(3) As per final order.

[8] In this petition, following issues have been framed by the Tribunal at Exh.94 in MACP No.414/2015 : -

I S S U E S

(1) Whether the applicant proves that he sustained injuries in the vehicular accident occurred due to rash and negligent driving of driver of the offending vehicle ?

(2) Whether the applicant is entitled to get the amount of compensation as claimed in petition ? If yes, what amount and from whom ?

(5) What order and award ?

[8.1] My findings on the above issues are as under :-

(1) Affirmative.
(2) Affirmative, As per final order.
(3) As per final order

R E A S O N S

ISSUE No.1 in all MACPs :-

[9] The applicant no.1 – Renukaben Pramodkumar Trivedi has filed her affidavit in MACP No.412/2015 under Order 18, Rule 4 of the Civil Procedure Code at Exh.35 in this petition. The applicant has stated in her deposition that she is applicant no.1, applicants no.2 to 4 are her children and applicant no.5 is her mother-in-law. It is further submitted that on 19-12-2008, the deceased Pramodkumar was going to Vadodara from Bharuch, on National Highway No.8 at 2.00 o'clock at night, in the sim of village Bharthana in Maruti Van No. GJ-5-N-2397. In the said Maruti-Van, two persons Thakorbhai and Pareshbhai were traveling. The deceased Pramodkumar was driving the said Maruti-Van on left side of the road, carefully, following the traffic rules, at that time, a truck bearing registration No. RJ-5G-4055 owned by opponent no.2 and driven by opponent no.1 came in very rash, negligent and in a manner endangering human life, and dashed with the said Maruti-Van, as a result of which, the deceased Pramodkumar sustained serious injuries and so, he was died. In that said accident, Thakorbhai was also died and Pareshbhai was sustained serious injuries. The said accident was occurred due to negligency of opponent no.1 – driver. It is submitted that, the accident has occurred due to negligence of opponent no.1 Driver of Truck in respect of which an offence has been registered before Karjan Police Station vide I CR No.253/2008.

It is further stated in the deposition that at the time of accident the deceased was 33 years old and was earning Rs.2,57,196/- yearly after deducting all expense by doing the business of catering on occasion of marriages in the name and style of Shri Mota Kelvani Mandal. It is submitted that deceased had got serious injuries. The deceased was healthy and intellectual fit and if he will alive, then he can get growth in business. It is further submitted that the applicants incurred expense of Rs.10,000/- for treatment and funeral ceremony and transportation of deceased. It is submitted that after the demise of deceased who was only earning member in the family, the applicants are facing so many difficulties including financial difficulties and the applicants were dependents of the deceased and hence, for the economic loss, mental shock, transportation etc. suffered by the applicants due to demise of deceased in vehicular accident.

This witness was cross-examined by Ld. Advocate of opponent no.3 and in the cross-examination, the applicant has admitted that it is true that she has no personal knowledge of accident, it is not true that accident occurred due to her husband's whole negligence, it is true that on the day of accident her husband was driving Maruti-Van No. GJ-05-N-2397, it is true that other two persons were also with him, it is true that she has not produced any evidence regarding her husband's age. This witness has stated that Income-tax return and Driving License of the deceased has been produced. This witness has further stated that it is true that she has not produced any books regarding her husband's income, it is true that she does not want to produced evidence of income, it is not true that her husband was not earning more than Rs.3000/-, her mother-in-law opponent no.5 is alive. It is true that she has not produced evidence regarding expense of Rs.10,000/- incurred for the funeral ceremony and transportation. It is not true that her husband's age in more than 35 years at the time of accident. It is not true that she has filed false application for excess compensation.

[8] The applicant no.1 – Tinaben Thakorbhai Rathod has filed her affidavit in MACP No.413/2015 under Order 18, Rule 4 of the Civil Procedure Code at Exh.36 in this petition. The applicant has stated in her deposition that, she is applicant no.1, applicants no.2 & 3 are her children and applicant no.4 is her mother-in-law. It is further stated in her deposition that the deceased Thakorbhai was proceeding with the same Maruti-Van and going to the same place where the above accident had taken place. In the said accident, Thakorbhai sustained serious injury and he was also died. It is submitted that at the time of accident was 30 years old and was earning Rs.3,000/- per month by working in catering with deceased Pramodkumar in Bardoli. It is further submitted that the applicants incurred expense of Rs.10,000/- for treatment and funeral ceremony and transportation of deceased. It is submitted that, after the demise of deceased who was only earning member in the family, the financial condition has become worst of the applicants, who are dependents of the deceased and hence, for the economic loss, mental shock, transportation etc. suffered by the applicants due to demise of deceased in vehicular accident, applicants have constrained to prefer the present petition for compensation against the opponents.

Present witness is cross-examined by Ld. Advocate of opponent no.3 and during her cross-examination, the applicant has stated that it is true that she has no personal knowledge of accident. It is not true that she has not given any complaint regarding accident. It is not true that accident was occurred due to whole negligence of Pramodkumar. It is true that her husband Thakorbhai was going in Maruti Van No.GJ-05-N-2397. It is true that other two persons were also going with him. It is true that she has not produced any evidence regarding age of her husband. It is not true that her husband's age is more than 25 years. It is true that she has not produced evidence regarding income of her husband. It is not true that her husband was not earning more than Rs.2000/-. It is true that she has not produced evidence regarding expense of Rs.10,000/- incurred for the funeral ceremony and transportation.

Present witness is cross-examined by Ld. Advocate of opponent no.5 and during her cross-examination, the applicant has stated that she does not know that she has known after some time that accident occurred due to negligence of truck driver. It is true that she has not produced any evidence regarding age of her husband. It is true that she has not produced evidence regarding expense of Rs.10,000/- incurred for the funeral ceremony and transportation. It is not true that her husband was not earning more than Rs.2000/-. It is not true that she has filed application for excess compensation. It is true that complaint and charge-sheet were filed against the driver & owner of the truck for the accident.

[9] The applicant Pareshbhai @ Harishbhai Bhikhabhai Rathod has filed affidavit in MACP No.414/2015 under Order 18, Rule 4 of the Civil Procedure Code at Exh.37 in this petition. The applicant has stated in his deposition that, he was of 20 years at the time of filing of this petition. He was proceeding with the same Maruti-Van and going to the same place where the above accident had taken place. It is the case of the applicant that, in the said accident the applicant had sustained serious injuries. It is submitted that at the time of accident, he was 20 years old and was earning Rs.3,000/- per month by working in catering with deceased Pramodkumar at Bardoli. Due to accident, he sustained injury on various part of the body and sustained fracture on right shoulder. He incurred expense of food, transportation and attendant charges of Rs.10,000/-. He has 6% permanent disability and cannot do his work easily. Therefore, applicant has constrained to prefer the present petition for compensation of Rs.1,50,000/- against the opponents.

Present witness is cross-examined by Ld. Advocate of opponent no.5 and during his cross-examination, the applicant has stated that at the time of accident, he was going from Bardoli to Pavagadh in Maruti-van GJ-05-N-2397. It is true that Maruti-van was driven by Pramodbhai. It is true that Pramodbhai was driven the said Maruti-van slowly, carefully with the speed of 40. It is true that at the time of accident, their vehicle was on left side of the road. It is true that truck no.RJ-05-G-1655 came from the wrong side and dashed with the front side of Maruti-van. It is true that at the time of accident, he was sitting in Maruti-van in back-side and he was awaken. It is true that he was seen the truck from front side 10 ft. far away. It is true that the said accident occurred due to whole negligency of truck driver. It is true that there is no negligency of Pramodbhai - driver of Maruti-van. It is true that police has taken his statement and he informed the said fact. It is true that after accident, complaint and charge-sheet are filed against the truck driver. It is true that complaint is filed before the Karjan police station. It is true that he is coming without any support in the Court. It is true that he is doing his routine work daily. He is not doing any work. It is true that his hand was amputated in railway accident, but, not in present accident. His hand amputated before three to four months. After accident, he was doing labour work. It is true that before accident, he was earning Rs.2000/-. It is true that he is not produced any evidence regarding his age. He has produced bill of treatment and there is no other bills are remaining to produce. It is not true that he has no permanent disability due to accident. It is not true that he has filed application for excess compensation.

Present witness is cross-examined by Ld. Advocate of opponent no.3 and during his cross-examination, the applicant has stated that it is true that truck came from front side at place of incident. It is true that road is of 90 ft. wide, where, accident took place. It is true that Maruti-van damaged from front side. It is true that truck is damaged from right side i.e. driver side and Maruti-van is damaged from front side. It is not true that there is negligence of driver of Maruti-van. It is not true that driver of Maruti-van was driven the vehicle on the middle of the road and due to his negligence, accident was occurred.

[10] The witness Ankur Ramubhai Mistry has filed affidavit of examination-in-chief on behalf opponent no.3 in all MACPs at Exh.73 in this petition. He has stated that opponent no.3 – Bajaj Allianz Gen. Ins. Co. Ltd. is a limited company incorporated under the companies Act and doing insurance business throughout India and having one of its Branch office at Surat. It is further submitted that he is serving with the opponent no.3 as Assistant Manager Legal and working at Surat Branch office of opponent no.3. He further stated that the truck No. RJ-05-G-4055 was got insured with the opponent no.3 by filing a proposal form. He has submitted that the interest of Mr. Asgar in truck no. RJ-05-G-4055 was covered at the material time under the policy of insurance issued by this opponent no.3 subject to the terms conditions exceptions and limitations thereof and the confirmation of the compliance of sec.64VB of the Insurance Act, 1938. It is submitted that Good carrier permit of truck no. RJ-05-G-4055 is valid from 12-2-2008 to 11-2-2013 for route/area Rajasthan only. But, looking to the spot panchnama, accident is at Bharthana village, National Highway no.8, Bharuch to Vadodara, Gujarat. Hence, it is clear that on 19-12-2008, truck no.RJ-05-G-4055 was not holding valid and effective fitness certificate to ply the involved insured vehicle in Guarat State. It is further submitted that the opponent no.2 Insured/Mr. Asgar had knowing fully handed over the Truck No. RJ-05-G-4055 for Gujarat and at that time, the opponent No.2 was in full knowledge that the said truck was not having valid and effective route permit and fitness certificate and in such situation, insured vehicle cannot be plied on the road. Therefore, opponent no.2 has willfully violated the terms & conditions of the policy, hence, the opponent no.3 is not liable to indemnify insured opponent no.2. It is further submitted that opponent no.3 has sent notice to the opponent no.2 through RPAD requesting him to submit valid and effective permit & fitness certificate of truck no.RJ-05-G-4055.

Present witness is cross-examined by Ld. Advocate of applicant and during his cross-examination, this witness has clearly stated that passing of truck No. RJ-05-G-4055 is of Rajasthan and for entering in the Gujarat, permit is required. This witness has also admitted that Insurance Company has inquired from the concerned RTO office through their Investigator regarding permit. This witness has also admitted that this witness has not met with owner and driver of the truck.

[11] In MACP No.412/2015, the applicant has produced certified copy of the FIR vide Exh.39, panchnama of scene of offence vide Exh.40, Inquest panchnama of the deceased vide

Exh.41, P.M. note of deceased vide Exh.42, RC Book of truck no.RJ-05-G-4055 vide Exh.43, driving license of deceased Pramodkumar vide Exh.44, income-tax return of assessment year 2006-2007, 2007-2008, 2008-2009 of deceased Pramodkumar vide Exh.45 to 47**,** certificate given by Shri Mota Kelvani Mandal regarding contract of making food to Pramodkumar vide Exh.48, charge-sheet filed against opponent no.1 Truck Driver vide Exh.58.

In **MACP No.413/2015**, the applicant has produced copy of the P.M. report vide Exh.49, RC Book of Maruti-van No. GJ-15-N-2397 vide Exh.50, Inquest panchnama of the deceased vide Exh.59.

In **MACP No.414/2015**, the applicant has produced copy of the certificate of injury given by Sardar Smarak Hospital vide Exh.51, Bill of treatment of Rs.700/- vide Exh.52.

In all **MACPs**, the applicant has produced copy of the policy of truck at Exh.69, Extract of permit at Exh.70, fitness certificate of vehicle truck RJ-05-G-4055 at Exh.71, letter sent to opponent no.2 through RPAD at Exh.72.

On perusal of these documents, it transpires that, the registration numbers of both vehicles involved in accident have been referred in these documents and these documents are not rebutted by the opponents. On perusing of panchnama it transpires that at the site of accident there was continuous flow of traffic of vehicles and as the opponent No.1 was driving a big vehicle, it is duty cast upon the opponent to take adequate care while driving and to follow rules of traffic properly. It appears that if opponent no.1 had taken proper care while driving and controlled the speed, the accident could has been avoided.

Considering the deposition and cross-examination of applicant, it appears that the accident occurred because of the reasons as mentioned above and the opponent No.1 was driving the vehicle could not control the vehicle and he is solely responsible for the accident. From the complaint, charge-sheet and panchnama of place of offence, it further appears that vehicle truck came on wrong side of the road and dashed with the maruti van and in this way, accident took place. It also appears from the record that there is no negligence on the part of applicant, but, accident occurred due to rash and negligent driving of the opponent no.1.

[12] At Exh.41, the applicant has produced a certified copy of Inquest Panchnama and copy of Post Mortem report at Exh.42 of deceased Pramodkumar **in MACP No.412/2015,** at Exh.49 P.M. report of deceased Thakorbhai in **MACP No.413/2015**, at Exh.51 injury certificate given by Sardar Smarak Hospital of Pareshbhai in **MACP No.414/2015.** Considering these documents, it is proved that the deceased Pramodkumar and Thakorbhai have lost their lives in the accident and Pareshbhai sustained various injuries in the accident. Therefore, Issue no.1 in all the three MACPs are decided in the **"Affirmative".**

[13] ISSUE NO.2 in MACP no.412/2015 :-

Entitlement of compensation:

Once it is established that accident in question has occurred and it is also proved that deceased has lost his life in the accident. The issue that needs to be considered is whether the applicant is entitled for the compensation for the same. It transpires that applicant no.1 was wife of deceased and hence the applicant has lost her beloved husband at such an age and from the affidavit of the applicant, it also transpires that the deceased was an earning member and hence it is proved that applicant is entitled for compensation for death of Pramodkumar.

Quantum of the compensation:

The cardinal principle for awarding the compensation in the accident cases is that the compensation to be awarded must not be inadequate nor must be exorbitant but the same must be JUST COMPENSATION. And Hon'ble Apex court has in case of **National Insurance Co. Ltd. V/s Pranay Sethi & Others. SLP (Civil) No. 25590/2014 dated 31/10/2017** provided guidelines for awarding JUST COMPENSATION to the victims and accordingly in the present case JUST COMPENSATION is worked out as under.

Claim for Future Loss of Income- Loss of Dependency :

The claim for future loss of income can be computed by considering the income, age of the deceased and hence, it is necessary to determine the age, income of the deceased. The said aspects are discussed below.

Age:

The applicant no.1 has mentioned in the affidavit filed under order 18 rule 4 of the Civil Procedure Code produced at Exh.35 that on the date of accident the age of the deceased was 33 years. But, no documentary evidence has been produced by the applicants showing the date of birth of deceased in order to prove the age of deceased at the time of accident. Hence, there is no direct evidence proving the age of deceased at the time of accident. In the PM Report produced at **Exhibit 42** the Doctors who performed postmortem have stated that, at the time of accident deceased was **32** years old. The above document has been executed by professionals can be relied upon in absence of direct evidence and accordingly the age of the deceased is held as **32** years at the time of accident.

Income:

It is stated by the applicants that deceased was healthy at the time of accident and was not having any type of addiction. It is stated in her deposition at Exh.35, that the deceased was earning Rs.2,57,169/- per annum by doing the business of catering on occasion of marriages in the name of Shri Mota Kelvani Mandal. In support of this, the applicant has produced income-tax return of the deceased vide Exh.45 to 47 and as per income-tax return, the average income of the deceased comes to Rs.1,25,000/- per annum. In view of this and also considering the age, nature of work and his experience in said business, it is just and reasonable to consider annual income of the deceased at Rs.1,25,000/-**.** Hence, his annual income comes to Rs.1,25,000/-.

Considering the fact that the deceased was doing business and moreover as per the guidelines provided in the latest Judgment passed by **Hon'ble Supreme Court in the case of National insurance Co. Ltd. V/s Pranay Sethi & Others**, the income of the deceased is to be increased by prospective rise of 40% as the age of deceased was above 32 years, therefore, by adding 40% as prospective rise, the annual income of the deceased comes to Rs.1,75,000/- **(**1,25,000 **+**

50000) (1,25,000 x 40% = 50,000).

Dependents:

For arriving at the JUST COMPENSATION in terms of future loss of income, it is necessary to reduce the yearly income of the deceased by adjusting to the proportion of the income that would be used by the deceased for himself, if he had been alive. And for deciding said proportion the guidelines have been issued in the decision of the Hon'ble Supreme Court in case of **National Insurance Co. Ltd. V/s Pranay Sethi & Others. SLP (Civil) No. 25590/2014 dated 31/10/2017.** According to which the proportion for personal expenditure deductions have to be made by considering the number of dependents. In the present petition, as deceased was married and he has 5 dependents, 1/4 proportion of the income of deceased has to be deducted from the yearly income of deceased determined by doing so, income of Rs.1,31,250/- [(1,75,000 – 43750) (1,75,000 x 1/4 = 43750)] has to be considered for deciding the loss of dependency.

Multiplier:

As the age of deceased is determined as 32 years which is clear from the driving license and PM note, the multiplier of 16 will be applicable.

Loss of dependency:

Thus, the applicant is entitled to the claim of (1,31,250/- x 16) as Rs.21,00,000/-.

General & Non-pecuniary Damages.

Hon'ble Apex court has in the decision of **National Insurance**

Co. Ltd. V/s Pranay Sethi & Others. SLP (Civil) No. 25590/2014 dated 31/10/2017 provided that the applicant is also entitled for compensation under the following heads : Loss of Funeral expenses, Loss of estate and Loss of consortium. Hence, the applicant is awarded amount of compensation under different heads:-

Future loss of income	Rs.21,00,000/-
Funeral Expenses	Rs. 15,000/-
Loss of estate	Rs. 15,000/-
Loss of consortium	Rs. 40,000/-
	Rs.21,70,000 /-

Interest :- Now, it is well settled that interest to be awarded as per the prevalent Bank rates. Under sec. 171 it is discretion on the part of the Tribunal. Hence, looking to the fact of present case and prevailing circumstances, this Tribunal thinks fit and proper to award 9% p.a. interest.

Liability :- It appears from the FIR at Exh.39 and the panchnama of scene of offence at Exh.40 that the accident occurred due to negligent driving of opponent No.1 and perusing the Inquest panchnama at Exh.41, it appears that Pramodkumar lost his life due to road accident and insurance policy of offending vehicle i.e. truck has been produced by the applicant at Exh.69, in which the period of policy was from 11-2-2008 to 10-2-2009 and the date of accident i.e. 19-12-2008 which was in force and perusal of the same, it transpires that at the time of accident the insurance policy of the offending vehicle was in force and the opponent No.1 was driver, opponent no.2 is owner and opponent

No.3 was the insurance company of the offending vehicle. Hence, the opponent Nos.1 to 3 are jointly and severally liable to compensate, hence, Issue No.2 is decided accordingly in 'Affirmative'.

[14] <u>ISSUE NO.2 in MACP no.413/2015 :-</u>

<u>Entitlement of compensation</u>:

Once it is established that accident in question has occurred and it is also proved that deceased has lost his life in the accident. The issue that needs to be considered is whether the applicant is entitled for the compensation for the same. It transpires that applicant no.1 was wife of deceased and hence the applicant has lost her beloved husband at such an age and from the affidavit of the applicant, it also transpires that the deceased was an earning member and hence it is proved that applicant is entitled for compensation for death of Thakorbhai.

<u>Quantum of the compensation</u>:

The cardinal principle for awarding the compensation in the accident cases is that the compensation to be awarded must not be inadequate nor must be exorbitant but the same must be JUST COMPENSATION. And Hon'ble Apex court has in case of **National Insurance Co. Ltd. V/s Pranay Sethi & Others. SLP (Civil) No. 25590/2014 dated 31/10/2017** provided guidelines for awarding JUST COMPENSATION to the victims and accordingly in the present case JUST COMPENSATION is worked out as under.

<u>Claim for Future Loss of Income- Loss of Dependency :</u>

The claim for future loss of income can be computed by considering the income, age of the deceased and hence, it is necessary to determine the age, income of the deceased. The said aspects are discussed below.

Age:

The applicant no.1 has mentioned in the affidavit filed under order 18 rule 4 of the Civil Procedure Code produced at **Exh.36** that on the date of accident the age of the deceased was 30 years. But, no documentary evidence has been produced by the applicants showing the date of birth of deceased in order to prove the age of deceased at the time of accident. Hence, there is no direct evidence proving the age of deceased at the time of accident. In the PM Report produced at Exhibit 49 the Doctors who performed postmortem have stated that, at the time of accident deceased was 26 years old. The above document has been executed by professionals can be relied upon in absence of direct evidence and accordingly the age of the deceased is held as 26 years at the time of accident.

Income:

It is stated by the applicants that deceased was healthy at the time of accident and was not having any type of addiction. It is stated in her deposition that the deceased was earning Rs.3,000/- per month by doing work in catering with the Pramodkumar, but, no cogent evidence has been produced by the applicant to prove deceased's income. Thus, considering his age, industry in which applicant was engrossed and experience and the fact that the accident in question has occurred on 19/12/2008 and as per the Government Minimum Wages Data, it would be just and reasonable to consider his monthly income at

Rs.3000/-. Hence, his annual income comes to **Rs.36000/- (3000 x 12).**

Considering the fact that the deceased was a labour and moreover as per the guidelines provided in the latest Judgment passed by **Hon'ble Supreme Court in the case of National insurance Co. Ltd. V/s Pranay Sethi & Others**, the income in question has to be increased for prospective rise to 40%, as the age of deceased was above 26 years. So, it will be just to increase income to 40% for prospective rise. Hence, the annual income of the deceased comes to **Rs.50400/- [(Rs.36000 + 40% (14400)-].**

Dependents:

For arriving at the JUST COMPENSATION in terms of future loss of income, it is necessary to reduce the yearly income of the deceased by adjusting to the proportion of the income that would be used by the deceased, if he had been alive. And for deciding said proportion the guidelines have been issued in the decision of the Hon'ble Supreme Court in case of **National Insurance Co. Ltd. V/s Pranay Sethi & Others. SLP (Civil) No. 25590/2014 dated 31/10/2017.** According to which the proportion for personal expenditure deductions have to be made by considering the number of dependents. In the present petition, as deceased was married and he has 4 dependents, 1/4 proportion of the income of deceased has to be deducted from the yearly income of deceased determined by doing so, income of **Rs.37800/-** [(50400 - 12600) (50400 x 1/4 = 12600)] has to be considered for calculating loss of dependency.

Multiplier:

As the age of deceased is determined as 26 years, the multiplier of 17 will be applicable.

Loss of dependency:

Thus, the applicant is entitled to the claim of **(37800 x 17) as Rs.6,42,600/-.**

General & Non-pecuniary Damages.

Hon'ble Apex court has in the decision of **National Insurance Co. Ltd. V/s Pranay Sethi & Others. SLP (Civil) No. 25590/2014 dated 31/10/2017** provided that the applicant is also entitled for compensation under the following heads : Loss of Funeral expenses, Loss of estate and Loss of consortium. Hence, the applicant is awarded amount of compensation under different heads:-

Future loss of income	Rs. 6,42,600/-
Funeral Expenses	Rs. 15,000/-
Loss of estate	Rs. 15,000/-
Loss of consortium	Rs. 40,000/-
	Rs.**7,12,600**/-

Interest :- Now, it is well settled that interest to be awarded as per the prevalent Bank rates. Under sec. 171 it is discretion on the part of the Tribunal. Hence, looking to the fact of present case and prevailing circumstances, this Tribunal thinks fit and proper to award 9% p.a. interest.

Liability :- It appears from the FIR at Exh.39 and the panchnama of scene of offence at Exh.40 that the accident occurred due to negligent driving of opponent No.1 and perusing the Inquest panchnama, it appears that deceased lost his life due to road accident and insurance policy of offending vehicle i.e. truck has been produced by the applicant at Exh.69, in which the period of policy was from 11-2-2008 to 10-2-2009 and the date of accident i.e. 19-12-2008 which was in force and perusal of the same, it transpires that at the time of accident the insurance policy of the offending vehicle was in force and the opponent No.1 was driver, opponent no.2 is owner and opponent No.3 was the insurance company of the offending vehicle. Hence, the opponent Nos.1 to 3 are jointly and severally liable to compensate, hence, Issue No.2 is decided accordingly in 'Affirmative'.

[15] ISSUE NO.2 in MACP no.414/2015 :-

Entitlement of compensation:

Once it is established that, accident in question has occurred due to the rash and negligent driving of the opponent no.1 and it is also proved that, applicant has sustained injuries in the accident, it is proved that applicant is entitled to get compensation.

Quantum of the compensation:

The cardinal principle for awarding the compensation in the accident cases is that the compensation to be awarded must not be inadequate nor must be exorbitant, but the same must be JUST COMPENSATION. And **National Insurance Co. Ltd. v/s Pranay Sethi & Ors. SLP (Civil) No. 25590/2014 dated 31.10.2017** provided guidelines for awarding JUST

COMPENSATION to the victims and accordingly in the present case JUST COMPENSATION is worked out as under.

(1) <u>Claim for Future Loss of Income- :</u>

The claim for future loss of income can be computed by considering the **income, age and permanent disability of the applicant.** And hence it is **sine qua non** to determine first the age, income and permanent disability of the claimant. The said aspects are discussed below.

<u>Age</u>:

The applicant has mentioned in the affidavit filed under order 18 rule 4 of the Civil Procedure Code produced at Exh.37 that on the date of accident, his age was 20 years. But, no documentary evidence has been produced by the applicants showing the date of birth of deceased in order to prove the age of deceased at the time of accident. Hence, there is no direct evidence proving the age of deceased at the time of accident. But, as per the affidavit and Exh.1, applicant's age is 20 years on the day of accident and accordingly the age of the deceased is held as **20** years at the time of accident.

<u>Income:</u>

It is stated by the applicant that he was healthy at the time of accident and was not having any type of addiction. It is stated in his deposition that the deceased was earning Rs.3,000/- per month by doing work in catering with the Pramodkumar, but, no cogent evidence has been produced by the applicant to prove deceased's income. Thus, considering his age and date of accident on 19-12-2008, it would be just and reasonable to consider Rs.3000/- monthly income of the injured applicant**.** Hence, his annual income comes to Rs.36000/- (3000 x 12).

<u>Assessment of amount of compensation :-</u>

<u>Future loss of income</u> :-

Applicant has produced 6% disability certificate vide Exh.95 issued by Dr. Rasmikant O. Gandhi and both the advocates have passed a pursis and declare that they have no objection if 3% permanent disability is considered as body as a whole. Looking to the injury, it appears to be reasonable to consider 3% permanent disability body as a whole. It is also proved that the applicant sustained injuries in the accident which occurred due to the negligence of the Opponent No.1 Truck Driver. The said Truck was of the ownership of the Opponent No.2 and Opponent No.3 is Insurance Company of said truck. A cardinal principle in the motor accident claims is that, the Tribunal has to consider functional disability. Hence, considering the fact that, applicant had sustained serious injuries on various parts of his body, it will be proper to consider the functional disability of the applicant as 3**%** body as a whole.

As the age of applicant was 20 years at the time of accident and falls in the category of 15-20 age group, the multiplier of 18 will be applicable.

Thus, the applicant is entitled to the claim of future loss of income = Yearly income x permanent disability x multiplier (36000**/-** x 3% x 18) **as Rs.19,440/-.**

<u>Actual Medical Expenditure</u> :-

Looking to the deposition, he was sustained serious injuries and fracture on various parts of his body and so, he was operated and so, he has permanent disability. He had to spend amount for treatment and also incurred other medical expenses. Hence, the applicant has spent for medicine of Rs.700/- towards his treatment and for that medical bills are produced at **Exh.52**.

<u>Actual loss</u> :-

He has to remain indoor patient as he was sustained serious head injury and serious injuries on other parts of his body, so, he cannot work easily due to accidental injury, hence, applicant has suffered loss of income for 3 months, so he is entitled to get actual loss for 3 month i.e. Rs.9,000**/-** (Rs.3000 x 3 months).

<u>Pain, Shock and Sufferings</u> :-

Looking to the injury i.e. permanent disability, the applicant is entitled for Rs.10,000/- towards **pain, shock and suffering**.

<u>Transportation and special diet and attendant charges :</u>

Considering the period of hospitalization of the applicant for the medical treatment as well as injuries sustained by the applicant, the applicant is also entitled for Rs.7,500/- for Special Diet and Transportation charges and attendant charges.

The applicant is awarded amount of compensation under different heads:-

1	Future Loss of Income	19,440/-
2	Actual Medical Expenditure	700/-
3	Actual loss	9,000/-
4	Pain, Shock and Sufferings	10,000/-
5	Transportation and Special diet and attendant charges	7,500/-
	Total	**Rs.46,640/-**

Interest :- Now, it is well settled that interest to be awarded as per the prevalent Bank rates. Under sec. 171 it is discretion on the part of the Tribunal. Hence, looking to the fact of present case and prevailing circumstances, this Tribunal thinks fit and proper to award 9% p.a. interest.

Liability :- It appears from the FIR at Exh.39 and the panchnama of scene of offence at Exh.40 that the accident occurred due to negligent driving of opponent No.1 and perusing the injury certificate, it appears that the applicant has sustained serious injuries in the above mentioned road accident and insurance policy of offending vehicle i.e. truck has been produced by the applicant at Exh.69, in which the period of policy was from 11-2-2008 to 10-2-2009 and the date of accident i.e. 19-12-2008 which was in force and perusal of the same, it transpires that at the time of accident the insurance policy of the offending vehicle was in force and the opponent No.1 was driver, opponent no.2 is owner and opponent No.3 was the insurance company of the offending vehicle. Hence, the opponent Nos.1 to 3 are jointly and severally liable to compensate, hence, Issue No.2 is decided accordingly in ‘Affirmative’.

[16] The opponents no.4 & 5 are exonerated from their liability to pay compensation.

[17] As stated above, goods carrier route permit of truck No. RJ-05-G-4055 is valid from 12-2-2008 to 11-2-2013 for route/area of Rajasthan only and the unfortunate accident has taken place within the territory of Gujarat State at Bharthana village, National Highway No.8, Bharuch to Vadodara and therefore, it is clear that on 19-12-2008 the said truck No. RJ-05-G-4055 was not holding valid and effective permit and fitness certificate to ply the vechile involved in the present case within territory of Gujarat. The opponent no.2 – Owner had handed over the said Truck No. RJ-05-G-4055 to the Opponent No.1 – Driver for plying within Gujarat State and at that time, the opponent No.2 was in knowledge that the said truck was not having valid and effective route permit and fitness certificate and in such situation, insured vehicle could not ply on the road within Gujarat State. Therefore, opponent no.2 has willfully violated the terms & conditions of the policy. In the case of ***'Amrit Paul Sing And Another v. Tata Aig General Insurance Compnay Limited And Others; reported in 2018 SCC 7 558,*** it is held by the Hon'ble Supreme Court as under :-

> ***"23. The Court held that when the intention of the legislature is quite clear to the effect that a registered owner of the vehicle should not be held liable if the vehicle is not in his possession and control and there was evidence on record that Respondent 2 plied the vehicle without the insurance in violation of the statutory provision contained in Section 146 of the Act, the High Court could not have mulcted the liability on the financier and finally, the financier was absolved of the liability.***

24. In the case at hand, it is clearly demonstrable from the materials brought on record that the vehicle at the time of the accident did not have a permit. The appellants had taken the stand that the vehicle was not involved in the accident. That apart, they had not stated whether the vehicle had temporary permit or any other kind of permit. The exceptions that have been carved out under Section 66 of the Act, needless to emphasise, are to be pleaded and proved. The exceptions cannot be taken aid of in the course of an argument to seek absolution from liability. Use of a vehicle in a public place without a permit is a fundamental statutory infraction. We are disposed to think so in view of the series of exceptions carved out in Section 66. The said situations cannot be equated with absence of licence or a fake licence or a licence for different kind of vehicle, or, for that matter, violation of a condition of carrying more number of passengers. Therefore, the principles laid down in Swaran Singh (2004) 3 SCC 297 , 2004 SCC (Cri) 733 and Lakhmi Chand (2016) 3 SCC 100 , (2016) 2 SCC (Civ) 45 in that regard would not be applicable to the case at hand. That apart, the insurer had taken the plea that the vehicle in question had no permit. It does not require the wisdom of the Tripitaka, that the existence of a permit of any nature is a matter of documentary evidence. Nothing has been brought on record by the insured to prove that he had a permit of the vehicle. In such a situation, the onus cannot be cast on the insurer. Therefore, the Tribunal as well as the High Court had directed that the insurer

> ***was required to pay the compensation amount to the claimants with interest with the stipulation that the insurer shall be entitled to recover the same from the owner and the driver. The said directions are in consonance with the principles stated in Swaran Singh (2004) 3 SCC 297 , 2004 SCC (Cri) 733 and other cases pertaining to pay and recover principle.”***

The ratio laid down in the above judgment is directly applicable to the case on hand and in the present case also the opponent No.3 Insurance Company is required to be directed to pay the awarded amount first and then recover it from the Opponent No.1 and 2 driver and owner of the vehicle. Hence, Issue No.2 is decided in ‘Affirmative’ and for Issue No.3 following order is passed.

:: O R D E R ::

Order in MACP No.412/2015

- The petition is hereby partly allowed with proportionate costs and interest against Opponent No.1 to 3.
- The applicant do recover **Rs.21,70,000/- (Rupees Twenty One Lacs Seventy Thousand)** from the Opponent No.1 to 3 jointly and severally together with interest at the rate of 9**%** p.a. from the date of petition till

realization of the amount alongwith proportionate costs of the petition.

- The Opponent No.3 Insurance Company shall be entitled to recover the awarded amount from the Opponent No.1 Driver and Opponent No.2 – Owner.
- From the above said amount, 24% amount be apportioned to applicant No.1, 19% amount be apportioned to applicant No.2, 19% amount be apportioned to minor applicant No.3 and 19% amount be apportioned to minor applicant No.4, 19% amount be apportioned to applicant No.5.
- From the amount apportioned to the applicant nos.1, 2 & 5, 40% amount be paid to the applicant by account payee cheque and rest of the 60% be invested as Fixed Deposit in the name of the applicant no.1, 2 & 5 in any nationalized Bank named by the each applicant, for a period of Five (5) years, subject to the condition that, neither any pre-mature withdrawal of the said FD be allowed by the concerned bank without prior permission of this Tribunal nor any loan or advance against the said FD be granted.
- 100% amount apportioned to the minor applicant Nos.3 & 4 be invested as F.D. in any Nationalized Bank in the joint name of applicant No.1 till they attains age of majority or for a

period of Five (5) years, whichever is later.

- **The amount of interest accrued on the F.D. of minor applicant No.3 & 4 be paid to the applicant No.1.**
- The opponents are hereby directed to deposit in the office of this Tribunal the above amount of award, after deducting the amount of interim compensation, if any, paid u/s.140 of M.V. Act, within one month from the date of this order.
- The opponents will follow the guidelines of Hon'ble Gujarat High Court given in para 14 in the case of **Hansagauri Prafulchandra Ladhani cited at 2007 ACJ 1897,** with regard to the Income Tax Liability.
- On depositing the above amount of award by the liable opponents in this Tribunal, the amount of Court Fee Stamp, if recoverable on the awarded amount, be recovered from the awarded amount and the same be taxed as the costs of the petition.
- The applicants shall not be entitled for pre-mature withdrawal or any advance or loan on the F. D. Amount. The applicants shall be entitled for periodical interest accrued on the F. D. Amount, monthly or quarterly.
- Award be drawn accordingly.

Order in MACP No.413/2015

- The petition is hereby partly allowed with proportionate costs and interest against the opponents no.1 to 3.
- The opponents no.4 & 5 are exonerated from their liability to pay compensation.
- The applicant do recover **Rs.7,12,600/- (Rupees seven lacs twelve thousand six hundred only)** from the opponents no.1 to 3 jointly and severally together with running interest at the rate of 9**%** p.a. from the date of petition till realization of the amount along with proportionate costs of the petition.
- The Opponent No.3 Insurance Company shall be entitled to recover the awarded amount from the Opponent No.1 Driver and Opponent No.2 – Owner.
- From the above said amount, 40% amount be apportioned to applicant No.1, 20% amount be apportioned to applicant No.2, 20% amount be apportioned to minor applicant No.3 and 20% amount be apportioned to applicant No.4.
- From the amount apportioned to the applicant nos.1, 2 & 4, 40% amount be paid to the applicant by account payee cheque and rest of the 60% be invested as Fixed Deposit in the name of the applicant no.1, 2 & 4 in any

nationalized Bank named by the each applicant, for a period of Five (5) years.

- 100% amount apportioned to the minor applicant Nos.3 be invested as F.D. in any Nationalized Bank in the joint name of applicant No.1 till they attains age of majority or for a period of Five (5) years, whichever is later.
- **The amount of interest accrued on the F.D. of minor applicant No.3 be paid to the applicant No.1.**
- The applicants shall not be entitled for pre-mature withdrawal or any advance or loan on the F. D. Amount. The applicants shall be entitled for periodical interest accrued on the F. D. Amount, monthly or quarterly.
- The opponents are hereby directed to deposit in the office of this Tribunal the above amount of award, after deducting the amount of interim compensation, if any, paid u/s.140 of M.V. Act, within one month from the date of this order.
- The opponents will follow the guidelines of Hon'ble Gujarat High Court given in para 14 in the case of **Hansagauri Prafulchandra Ladhani cited at 2007 ACJ 1897,** with regard to the Income Tax Liability.
- On depositing the above amount of award by the liable opponents in this Tribunal, the amount of Court Fee Stamp, if recoverable on the awarded

amount, be recovered from the awarded amount and the same be taxed as the costs of the petition.

- The applicants shall not be entitled for pre-mature withdrawal or any advance or loan on the F. D. Amount. The applicants shall be entitled for periodical interest accrued on the F. D. Amount, monthly or quarterly.
- Award be drawn accordingly.

Order in MACP No.414/2015

- The petition is hereby partly allowed with proportionate costs and interest against the opponents no.1 to 3.
- The opponents no.4 & 5 are exonerated from their liability to pay compensation.
- The applicant do recover **Rs.46,640/- (Rupees forty six thousand six hundred forty only)** from the opponents no.1 to 3 jointly and severally together with running interest at the rate of 9**%** p.a. from the date of petition till realization of the amount along with proportionate costs of the petition.
- The Opponent No.3 Insurance Company shall be entitled to recover the awarded amount from the Opponent No.1 Driver and Opponent No.2 – Owner.

- From the amount apportioned to the applicant, 40% amount be paid to the applicant by account payee cheque and rest of the 60% be invested as Fixed Deposit in the name of the applicant in any nationalized Bank named by the each applicant, for a period of Five (5) years, subject to the condition that, neither any pre-mature withdrawal of the said FD be allowed by the concerned bank without prior permission of this Tribunal nor any loan or advance against the said FD be granted.
- The opponents are hereby directed to deposit in the office of this Tribunal the above amount of award, after deducting the amount of interim compensation, if any, paid u/s.140 of M.V. Act, within one month from the date of this order.
- The opponents will follow the guidelines of Hon'ble Gujarat High Court given in para 14 in the case of **Hansagauri Prafulchandra Ladhani cited at 2007 ACJ 1897,** with regard to the Income Tax Liability.
- On depositing the above amount of award by the liable opponents in this Tribunal, the amount of Court Fee Stamp, if recoverable on the awarded amount, be recovered from the awarded amount and the same be taxed as the costs of the petition.
- The applicants shall not be entitled for pre-

mature withdrawal or any advance or loan on the F. D. Amount. The applicants shall be entitled for periodical interest accrued on the F. D. Amount, monthly or quarterly.

- Award be drawn accordingly.

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

- The said amount shall be invested with any of the nationalized Bank of the choice of the applicant in Fixed Deposit Receipt Account.
- The interest on the above Fixed Deposit Receipt Account as and when it becomes payable monthly, quarterly, half-yearly or annually, as agreed to, shall be paid to the applicant.
- No facility by way of loan, over-draft or cash credit shall be available on the above investment and the Bank shall not allow any such transaction, encumbering the investment or on the basis of the security of the same.
- The Bank shall not permit the applicant to withdraw the said amount prior to its maturity or without prior permission of this Tribunal.
- The Bank shall intimate to this Tribunal the particulars of the investment viz., number of Fixed Deposit Receipt, name of holder and the date of maturity immediately after issuance of Fixed Deposit Receipt in this case.

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

Pronounced in the open Court today this **27th of month May, 2021.**

Date **: 27-5-2021**
Place **: Bardoli**.

[Basantkumar Gurmukhlal Golani]
M.A.C. Tribunal (Auxi.), Surat
at Bardoli
U.I.Code No.GJ01509

PPS/KMC