Received on:	**27**	**06**	**2002**
Registered on:	**27**	**06**	**2002**
Decided on:	**31**	**01**	**2018**
Duration:	02	07	15

BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL (AUXI.) & 15th AD-HOC ADDITIONAL DISTRICT JUDGE VADODARA AT SAVLI.

MACP No. 419 of 2015
(Old MACP No. 867/2002)
Exh.___

	CLAIMANT	Age	Occupation
1	***Pravinbhai Ganpatbhai Rathod,*** *Residing At –Rayka village, Ta – Savli. Dist- Vadodara.*	35	Driving

MACP No. 420 of 2015
(Old MACP No. 868/2002)

	CLAIMANT	Age	Occupation
1	***Hasmukhbhai Babubhai Solanki,*** *(As per order below dated 23.09.2017)* *Residing At –Rayka village, Ta – Savli. Dist- Vadodara.*	21	Service

VERSUS

	OPPONENTS	Age	Occupation
1	***Gulabchandra Shivkumar Rajbar,*** *Residing At – Ranoli, Ta & Dist – Vadodara.*	Adult	Driver Tanker No. GTY-6572
2	***Labhuben B. Aayar,*** *Residing At – Mithrohar, Ta – Anjar, Dist - Kacch.*	Adult	Owner Tanker No. GTY-6572
3	***United India Insurance Co. Ltd.*** *Office – Plot No. 13, Sector-9, Above Dena Bank, Gandhidham.*	-	Insurer Tanker No. GTY-6572

***Appearance**:-*
Ld. Advocate Mr. A. R. Shah for the claimants.
Ld. Advocate Mrs. Manju Kella for the opponent No. 3
Ex party against the opponent No. 1.

Subject: Claim petition U/s.166 of the M. V. Act, 1988.

JUDGMENT

1. *Present claim petition is preferred by both the claimants, under Section-166 of the Motor Vehicle Act, 1988, for getting compensation of Rs. 3,00,000/- and Rs. 3,00,000/- respectively.*

2. *Both the claim petitions have arisen out of a same vehicular accident hence, both are consolidated with main MACP No. 419 of 2015 and are decided by this common Judgment.*

It is required to be noted that, since both the claim petition have been consolidated and tried together, claimants have lead oral as well as documentary evidence in MACP No. 419 of 2015.

For sake of convenience claimant of MACP No. 419/2015 will be mentioned as Claimant No.1, claimant of MACP No. 420/2015, will be mentioned as Claimant No.2.

3. *The factual matrix leading to the present proceeding are as under :-*

It is the say and submission of the claimants that, on 27.02.2002, at about 08:30 hours, they were proceeding towards Vadodara by way of traveling in a Tempo No. GJ-6-V-6107. The driver of the said Tempo was driving his vehicle in moderate speed on the correct side of the road and was also following the rules and regulations of the traffic. The opponent No. 1 i.e. the driver of Tanker No. GTY-6572 was came from opposite direction, in excessive speed and that too in rash and negligent manner. It is further contended that, as soon as the Tempo reached near Kathariya Stand on Vasad-Asodar road, at that time the Opponent No. 1 driver has lost his *control over the vehicle and dashed with the claimant's Motorcycle and caused accident. In this accident claimants have sustained serious bodily injuries therefore, claimants have claimed compensation from the opponents under various heads.*

Written Statement

3. *On due service of notices, opponents No. 1 & 2 have not filed their written statements, hence not contested on their part. While, Opponent Insurance Company has filed its written statements vide Ex.13 in both petition. The opponent Insurance Company has denied all the averments made in claim petition. Further, opponent No. 3 has made contention that, there is clear breach of policy condition and therefore, Opponent-Insurance Company is not at all liable to indemnify the loss occurred to the claimant.*

4. *The parties have adduced and produced following oral as well as relevant documentary evidences:*

Sr. No.	**Evidence**	**Exh./Mark**
	Oral Evidences	
1.	*Pravinbhai Ganpatbhai Rathod*	22
2.	*Hasmukhbhai Babubhai Solanki*	32
	Documentary Evidences- (MACP No. 419/2015)	
1.	*Copy of complaint*	24
2.	*Copy of panchnama*	25
3.	*Copy of insurance policy*	26
4.	*Copy of R. C. book of the offending vehicle*	27
5.	*Copy of injury certificate*	28
7.	*Original medical bills worth Rs. 76,612/-*	29
8.	*Copy of D.L. of the claimant no. 1*	30
9.	*Original Disability Certificate*	43

	Documentary Evidences- (MACP No. 420/2015)	
1.	*Copy of injury certificate*	38
2.	*Original medical bills (total=11)worth Rs. 1,29,633/-*	39
3.	*Original Disability Certificate*	45

5. *After filing of closing purshis, heard learned advocate Ms. Shah for the claimants, as well as learned advocate Mrs. Kella for the opponent No. 3, Insurance Company. Ld. Advocate Ms. Shah for the claimant has vehemently argued that, opponents are liable to indemnify the loss occurred due to accident. Ld. Advocate Ms. Kella has strongly submitted that, there is a clear breach of policy condition and the opponent no. 1, driver of the insured vehicle was not having valid and effective driving licence at the time of accident and therefore, IC is not liable to indemnify the loss occurred to the claimant. There was no submission on behalf of Driver and Owner of the vehicle.*

Issues.

6. *For the just decision of this claim petition, following issues have arisen for consideration.*

1. *Whether the claimants proves the involvement of the vehicles in the accident, as alleged ?*
2. *Whether the claimants prove that, they have sustained injuries because of rash and negligent driving of the drivers of the vehicle involved in this accident?*
3. *Whether the claimants are entitled to any amount of compensation? If yes, to what extent and from whom?*
4. *What order and award ?*

Findings.

7. *My findings on the above issues are as under:*

1. *In the affirmative,*
2. *In the affirmative,*
3. *As per final order.*
4. *As per final order.*

REASONS

Issue No.1 : Involvement of Vehicle & Negligence.

8. *The claimants have produced their oral evidence at Exh. 17 & Ex. 39 respectively. Claimants have supported all the facts mentioned in the claim petition. Nothing contrary is revealed from thier cross-examinations.*

8.2 *Looking to Exh.* ***24*** *- police complain, it transpires that on 27.02.2002, at about 08:30 hours, claimants were returning to Vadodara in a Tempo No. GJ-6-V-6107. Claimant no. 1 was driving the said vehicle while the claimant no. 2 was accompanying him as a cleaner. It is further mentioned that, the opponent No. 1 came from opposite direction, driving his Tanker No. GTY-6572 in rash and negligent manner and due to over speeding and uncontrollable speed, the Tanker has dashed the offending vehicle with the Tempo of the claimants. Perusing the medical papers, more particularly injury certificates of the claimants produced at* ***Exh. 28 & 38*** *it clearly transpires that claimants have sustained serious bodily injuries in the vehicular accident as mentioned in the claim petition.* ***Ex. 24*** *- a copy of complaint, given by the Tanker conductor/cleaner Vinodbhai Shivkumar who is the brother of the driver of the Tanker, has informed the police, about the accident. Perusing complaint, the complainant i.e. Vinodbhai Shivkumar has clearly mentioned and* *narrated that, while, plying the vehicle his brother was trying to overtake the unknown vehicle resultant, he lost his control over the Tanker and caused accident. Panchnama of the site of accident is also produced by the claimants. Looking to the contents of the same, it clearly suggests that, the opponent No. 1 has dashed his vehicle with the claimants vehicle face to face. Place of accident and involvement of offending vehicle is clearly established from the Spot Panchnama vide **Ex 25**. It is profitable to note that, it is expected from the driver of the vehicle to drive his vehicle taking utmost care of the vehicles and public on road. Here, accident occurred on an open road i.e., Vasad-Asodar Road and the opponent no. 1 has, driving his vehicle in full speed dashed with the vehicle of the claimants. Thus, in view of the oral as well as documentary evidence, involvement of vehicles and place of accident is duly proved. Further, it is undisputed fact that present accident has occurred due to negligent driving on the part of opponent No. 1, Tanker driver. Perusing the Oral as well as Documentary evidence, clearly speaks negligence on the part of the driver of the Tanker i.e., Opponent no. 1, in the accident. Therefore, it is evident from record that, if the opponent No. 1 driver of the Tanker has taken a little care and if he was remained attentive while plying his vehicle, he could have averted this accident. Thus, this accident has occurred due to sole negligence on the part of opponent No. 1. Therefore, issue No. 1 is decided in affirmative accordingly.*

***Issue No.2:* Quantum of Compensation.**

[A]- *Nature of Injury and Disability* (MACP No. 419/15)

9. *Looking to the Injury certificate Vide **Ex. 28** as well as **Ex. 43**– Disability Certificate, it clearly transpires that the claimant has sustained multiple fracture injuries like radius joint fracture, multiple rib fracture, fracture fibula and fracture ulna radius, **Ex.***

43, *Disability Certificate suggest that, due to these accidental injuries, Partial Permanent Disability is 25% of left lower limb. Ld. Advocates have agreed upon to consider total 10% Body as whole Disability vide* ***Ex. 42*** *purshish. Therefore, the same is considered for rest of discussion regarding calculation of economic of loss or loss of earning capacity.*

Claimant's Age

9.2 *Claimant has not produced any documentary evidence regarding his Age. Claimant has mentioned his age as 35 years at the time of filing of the petition. Perusing the medical certificates more particularly Injury Certificate Vide* ***Ex. 28*** *the age of the claimant was 30 years old. The accident occurred in the year 2002 and therefore, considering it all, it will be just and proper to presume that, at the time of accident, injured-claimant would be 30 years.*

Profession / Occupation & income of injured-Claimant

9.3 *It is the say of the claimant that he was doing a job as a driver in Tempo No. GJ-6-V-6107 at the time of accident and used to earn Rs. 4,000/- p.m. It is pertinent to note that, these are bare words and not supported by any cogent documentary evidence. Therefore, it will be just and proper to ascertain the monthly income of the claimant. Age of the claimant was 30 years at the time of accident which occurred in the year 2010 therefore, considering basic wage rates, type of work the claimant was doing and social background of the claimant, it will be just and proper to consider Rs. 3,000/- monthly income of the claimant. Therefore, claimant's yearly notional income is required to be considered as Rs. 36,000/- at the time of accident.*

Multiplier

9.4 *In* ***Sarla Verma and others v. Delhi Transport Corporation and others, 2009 ACJ 1298,*** *Hon'ble Supreme Court has held that-*

multiplier - 17 *is applicable, where the age group of person is 26-30 years.*

Future Loss of income

9.5 *The claimant is entitled to get Rs. 36,000/- (yearly income) x 10% (reduction in earning capacity/disability)= Rs. 3,600/- x 17 (multiplier) = Rs. 61,200/- towards future loss of income. Therefore, it will be just and proper to award* ***Rs. 61,200/- towards future loss of income.***

Actual Loss of Income.

9.6 *The claimant has undergone treatment for fracture injuries like radius joint fracture, multiple rib fracture, fracture fibula and fracture alna radius. As per disability certificate he is having complaint of severe pain in the left leg, weakness of left lower limb, difficulty in sitting cross-legged & squatting, cannot walk without stick support and restriction of left leg movements. and also having problems in doing daily work. Therefore, it can safely be presume that the claimant might have difficulties in his day to day routine work in early period after accident. Claimant has also submitted medical papers wherein it is mentioned that the claimant was admitted on 27.2.2002 and was discharged on 25.03.2002. Therefore, considering the same and the injuries sustained by the claimant, it will be just and proper to consider 3 months time, the claimant might have suffered difficulties in resuming his routine work. Therefore, claimant is entitled to get Rs. 3,000 x 3 (Months) =* ***Rs. 9,000/-,*** *as an amount of actual loss of income due to accidental injuries.*

Medical and Hospitalization.

9.7 *It is proved that, the claimant has sustained grievous injuries and has also undergone treatment for fracture injuries like radius joint fracture, multiple rib fracture, fracture fibula and fracture ulna* *radius. Claimant has incurred heavy expenditure for the treatment. Claimant has also produced medical bills worth Rs. 76,612/- vide Ex. 29 in support of his petition. There is nothing adverse to the claimant's claim regarding medical treatment therefore, it is just and proper to award amount of* ***Rs. 76,600/-*** *in round figure under this head.*

Attendant, Special diets and Transportation Expenses

9.8 *Creeping through the evidence produced on record, it appeat that, claimant was admitted on 27.2.2002 and was discharged on 25.03.2002. During the period of hospitalization and follow-up treatment, the claimant might have required help of attendant. Further, claimant might have incurred some expenses towards special diets, transportation charges, etc. The claimant has not produced any supporting documentary evidence in these regard. Therefore, it is just and proper to award* ***Rs. 10,000/- towards Attendant, Special diets and Transportation expenses.***

Non-Pecuniary Loss including loss of amenities of life

9.9 *Looking to nature of injuries and that too multiple fracture injuries like radius joint fracture, multiple rib fracture, fracture fibula and fracture ulna radius, it can certainly be presumed that the claimant has faced mental trauma and also might have undergone severe pain and suffering for considerable period. The law values life and limb of a person in the free society, compensation of such pain and suffering cannot be weighted by the golden scale. Therefore, it is just and proper to award* ***Rs. 10,000/- towards Pain, Shock and Suffering including loss of amenities of life.***

10. *Thus, claimant is entitled to get the following amount of compensation:*

Amount in Rs.	***Particulars***
61,200/-	*Towards Future loss of income*
9,000/-	*Towards Actual loss of income*
76,600/-	*Towards Medical Expneses*
10,000/-	*Towards Attendant, Special diets & Transportation Expenses*
10,000/-	*Towards Pain & Shock Suffering etc.*
Rs. 1,66,800/-	***Total Compensation***

[B]- Nature of Injury and Disability.- (MACP No. 420/15)

11. *Looking to the Injury certificate produced* ***Ex. 38*** *as well as* ***Exh. 45–*** *Disability Certificate, it clearly transpires that the claimant has sustained injuries like head injuries, injuries on face & lip, fracture on Lt. Femur, fracture on Lt. tibia fibula, shortening of left limb by 2 c.m., restriction of movements at hip joint and knee and limping of the limb.* ***Ex. 46,*** *Disability Certificate suggest that, due to these accidental injuries, Partial Permanent Disability is 40% of left lower limb. Ld. Advocates have agreed upon to consider total 20% Body as whole Disability vide* ***Ex. 44*** *purshish. Therefore, the same is considered for rest of discussion regarding calculation of economic of loss or loss of earning capacity.*

Claimant's Age

11.2 *Claimant has not produced any documentary evidence regarding his Age. Claimant has mentioned his age as 21 years at the time of filing of the petition. Perusing the medical certificates more particularly Injury Certificate Vide* ***Ex. 38*** *the age of the claimant was 25 years old. The accident occurred in the year 2002 and therefore, considering it all, it will be just and proper to presume that, at the time of accident, injured-claimant would be 25* ***years.***

Profession / Occupation & income of injured-Claimant

11.3 *It is the say of the claimant that he was doing a job as a* *cleaner/conductor in Tempo No. GJ-6-V-6107 at the time of accident and used to earn Rs. 2,500/- p.m. It is pertinent to note that, these are bare words and not supported by any cogent documentary evidence. Therefore, it will be just and proper to ascertain the monthly income of the claimant. Age of the claimant was 30 years at the time of accident which occurred in the year 2010 therefore, considering basic wage rates, type of work the claimant was doing and social background of the claimant, it will be just and proper to consider Rs. 2,000/- monthly income of the claimant. Therefore, claimant's* ***yearly notional income is required to be considered as Rs. 24,000/-*** *at the time of accident.*

Multiplier

11.4 *In* ***Sarla Verma and others v. Delhi Transport Corporation and others, 2009 ACJ 1298,*** *Hon'ble Supreme Court has held that-* ***multiplier - 18*** *is applicable, where the age group of person is 21-25 years.*

Future Loss of income

11.5 *The claimant is entitled to get Rs. 24,000/- (yearly income) x 20% (reduction in earning capacity/disability)=Rs. 4,800/- x 18 (multiplier) = Rs. 86,400/- towards future loss of income. Therefore, it will be just and proper to award* ***Rs. 86,400/- towards future loss of income.***

Actual Loss of Income.

11.6 *The claimant has undergone treatment for fracture injuries like radius joint fracture, multiple rib fracture, fracture fibula and fracture ulna radius. As per disability certificate he is having complaint of severe pain in the left leg, weakness of left lower limb, difficulty in sitting cross-legged & squatting, cannot walk without stick* *support and restriction of left leg movements. and also having problems in doing daily work. Therefore, it can safely be presume that the claimant might have difficulties in his day to day routine work in early period after accident. Claimant has also submitted medical papers wherein it is mentioned that the claimant was admitted on 27.2.2002 and was discharged on 25.03.2002. Therefore, considering the same and the injuries sustained by the claimant, it will be just and proper to consider 3 months time, the claimant might have suffered difficulties in resuming his routine work. Therefore, claimant is entitled to get Rs. 2,000 x 3 (Months) =* ***Rs. 6,000/-,*** *as an amount of actual loss of income due to accidental injuries.*

Medical and Hospitalization.

11.7 *The claimant has undergone treatment for fracture injuries like radius joint fracture, multiple rib fracture, fracture fibula and fracture ulna radius. Claimant has incurred heavy expenditure for the treatment. Claimant has also produced medical bills worth Rs. 1,29,600/- vide Ex. 39 in support of his petition. There is nothing adverse to the claimant's claim regarding medical treatment therefore, it is just and proper to award amount of* ***Rs. 1,29,600/-*** *under this head.*

Attendant, Special diets and Transportation Expenses

11.8 *During the period of hospitalization and follow-up treatment, the claimant might have required help of attendant. Further, claimant might have incurred some expenses towards special diets, transportation charges, etc. The claimant has not produced any supporting documentary evidence in these regard. Therefore, it is just and proper to award* ***Rs. 10,000/- towards Attendant, Special diets and Transportation expenses.***

Non-Pecuniary Loss including loss of amenities of life

11.9 *Looking to nature of injuries and that too multiple fracture injuries like radius joint fracture, multiple rib fracture, fracture fibula and fracture alna radius, it can certainly be presumed that the claimant has faced mental trauma and also might have undergone severe pain and suffering for considerable period. The law values life and limb of a person in the free society, compensation of such pain and suffering cannot be weighted by the golden scale. Therefore, it is just and proper to award* ***Rs. 10,000/- towards Pain, Shock and Suffering including loss of amenities of life.***

12. *Thus, claimant is entitled to get the following amount of compensation:*

Amount in Rs.	***Particulars***
Rs. 86,400/-	*Towards Future loss of income*
Rs. 6,000/-	*Towards Actual loss of income*
Rs. 1,29,600/-	*Towards Medical Expenses*
Rs. 10,000/-	*Towards Attendant, Special diets & Transportation Expenses*
Rs. 10,000/-	*Towards Pain & Shock Suffering etc.*
Rs. 2,42,000/-	***Total Compensation***

Liability

13. *As it was discussed and decided in issue no. 1, the opponent no. 1 Tanker Driver was solely responsible for the accident. Therefore, he is primarily liable to pay compensation. It is not disputed that, at the material point of time, opponent No. 2 was owner of offending vehicle i.e. Tanker No. GTY-6572. Therefore, opponent no. 2 owner is vicariously liable for the negligent act and responsible to pay compensation to the claimant.*

Ld. Advocate Ms. Kella, for the Insurance Company has strongly submitted that, there was clear breach of policy condition, the opponent no. 1 driver of the offending vehicle was holding license for

LMV and at the time of accident, he was driving passenger service vehicle. There is nothing on record which suggests that, endorsement to the effect on transport vehicle was obtained and thereby the opponent no. 1 was holding valid and effective driving license.

Against the same, Ld. Advocate for the claimants has vehemently argued that, offending vehicle i.e., Tanker was insured with the Insurance Company and Insurance company has issued policies against accepting premium amount. It was further argued that, as per Sec. 2(21) of the Act, where there is unladen weight of the vehicle does not exceed 7500 kilograms, the same shall be considered as Light Motor Vehicle and here in the case on hand the total weight of the Auto Tanker is less than 7500 Kg., and therefore the Insurance Company can not be benefited by not indemnifying the liability of the insured.

Now, in view of the submissions and arguments advanced by the parties, it is just and proper to evaluate the evidence on record. It is much admitted fact that, the opponent no. 1, i.e. driver of the Tanker was holding license to drive Light Motor Vehicle. It is also admitted fact that the total weight of the offending vehicle was less than 7500 kilograms. It is also admitted fact that, there was no endorsement of the R.T.O. authorizing the opponent no. 1 to drive Transport Vehicle. In view of the aforesaid position, it will be benefited to go through legal position regarding same.

In the ruling reported in 2008 ACJ 721, National Insurance Co. Ltd. Vs. Annappa Irappa Nesaria and others, hon'ble the Apex Court has held that; *after the amendment in the Act, the 'transport vehicle' has been substituted for 'medium goods vehicle' and 'heavy goods vehicle'. The light motor vehicle continued, at the relevant point of time, to cover both, light passenger carriage vehicle and light* *goods carriage vehicle and therefore, a driver who had a valid license to drive a light motor vehicle, was authorized to drive a light goods vehicle as well.*

Hon'ble the Himachal Pradesh High Court had in the ruling reported in 2010 ACJ 725, Prem Singh Vs. Baldasi and others made a reference to the Larger Bench of the Hon'ble Himachal Pradesh High Court on the question of law that; ***Whether a driving license permitting the holder of the licence to drive a light motor vehicle entitles him to drive a transport vehicle, the unladen weight of which is less than 7500 kilogram? Hon'ble the larger bench of the High Court of H. P.*** *had after referring and following the principles laid down in the case of* ***National Insurance Co. Ltd. Vs. Kusum Rai, 2006 ACJ 1336 (SC), National Insurance Co. Ltd. Vs. Annappa Irappa Nesaria, 2008 ACJ 721 and New India Assurance Co. Ltd. Vs. Roshanben Rahemansha Fakir, 2008 ACJ 2161 (SC), answered the reference accordingly.***

It will be benefited to note that, in the latest ruling of ***Mukund Dewangan Vs. Oriental Insurance Co. Ltd., in Civil Appeal No. 5826 of 2011,*** *while dealing with the question that; whether a driver who is having a licence to drive 'light motor vehicle' and is driving 'transport vehicle' of that class is required additionally to obtain an endorsement to drive a transport vehicle?, Larger Bench of the Hon'ble the Apex Court has held that;*

> *46. Section 10 of the Act requires a driver to hold a licence with respect to the class of vehicles and not with respect to the type of vehicles. In one class of vehicles, there may be different kinds of vehicles. If they fall in the same class of vehicles, no separate endorsement is required to drive such vehicles. As light motor vehicle includes transport vehicle also, a holder of light motor vehicle licence can drive all the vehicles of the class including transport vehicles. It was pre-amended position as well the post-amended position of Form 4 as amended on*

28.3.2001. Any other interpretation would be repugnant to the definition of "light motor vehicle" in section 2(21) and the provisions of section 10(2)(d), Rule 8 of the Rules of 1989, other provisions and also the forms which are in tune with the provisions. Even otherwise the forms never intended to exclude transport vehicles from the category of 'light motor vehicles' and for light motor vehicle, the validity period of such licence hold good and apply for the transport vehicle of such class also and the expression in Section 10(2)(e) of the Act 'Transport Vehicle' would include medium goods vehicle, medium passenger motor vehicle, heavy goods vehicle, heavy passenger motor vehicle which earlier found place in section 10(2)(e) to (h) and our conclusion is fortified by the syllabus and rules which we have discussed. Thus we answer the questions which are referred to us thus:

(i) 'Light motor vehicle' as defined in section 2(21) of the Act would include a transport vehicle as per the weight prescribed in section 2(21) read with section 2(15) and 2(48). Such transport vehicles are not excluded from the definition of the light motor vehicle by virtue of Amendment Act No.54/1994.

(ii) A transport vehicle and omnibus, the gross vehicle weight of either of which does not exceed 7500 kg. would be a light motor vehicle and also motor car or tractor or a road roller, 'unladen weight' of which does not exceed 7500 kg. and holder of a driving licence to drive class of "light motor vehicle" as provided in section 10(2)(d) is competent to drive a transport vehicle or omnibus, the gross vehicle weight of which does not exceed 7500 kg. or a motor car or tractor or road-roller, the "unladen weight" of which does not exceed 7500 kg. That is to say, no separate endorsement on the licence is required to drive a transport vehicle of light motor vehicle class as enumerated above. A licence issued under section 10(2)(d) continues to be valid after Amendment Act 54/1994 and 28.3.2001 in the form.

(iii) The effect of the amendment made by virtue of Act No.54/1994 w.e.f. 14.11.1994 while substituting clauses (e) to (h) of section 10(2) which contained "medium goods vehicle" in section 10(2)(e), medium passenger motor vehicle in section 10(2)(f), heavy goods vehicle in section 10(2)(g) and "heavy passenger motor vehicle" in section 10(2)(h) with expression 'transport vehicle' as substituted in section 10(2)(e) related only to the aforesaid substituted classes only. It does not exclude transport vehicle, from the purview of section 10(2)(d) and section 2(41) of the Act i.e. light motor vehicle.

(iv) The effect of amendment of Form 4 by insertion of "transport vehicle" is related only to the categories which were substituted in the year 1994 and the procedure to obtain driving

> *licence for transport vehicle of class of "light motor vehicle" continues to be the same as it was and has not been changed and there is no requirement to obtain separate endorsement to drive transport vehicle, and if a driver is holding licence to drive light motor vehicle, he can drive transport vehicle of such class without any endorsement to that effect. (Underlined added).*

Therefore, in view of the settled legal position, the driver holding a license to drive Light Motor Vehicle is authorized to drive a light goods or transport vehicle as well. Perusing Ex. 27, R. C. Book of the offending vehicle, it clearly transpires that unladen weight of the offending vehicle was 2750.00 kg., which is much lesser than the maximum limit of 7500 kg. as mentioned in Sec. 2(21) of the Act. Therefore, in view of the principal laid down in Mukundan's case (Supra), " ***(iv) The effect of amendment of Form 4 by insertion of "transport vehicle" is related only to the categories which were substituted in the year 1994 and the procedure to obtain driving licence for transport vehicle of class of "light motor vehicle" continues to be the same as it was and has not been changed and there is no requirement to obtain separate endorsement to drive transport vehicle, and if a driver is holding licence to drive light motor vehicle, he can drive transport vehicle of such class without any endorsement to that effect."****, under the circumstances, the opponent no. 1 was having valid and effective driving license. Therefore, resistance on the ground of lacking effective license to drive 'Transport Vehicle', does not sustain.*

It is not in dispute that, at the relevant point of time on the day of accident, the offending vehicles was insured with the opponent no. 3, Insurance Company. Perusing Ex. 26, the Tanker was insured with the opponent no. 3 insurance company for the period from 24.10.2001 to 23.10.2002, and the date of accident was 27.02.2002. Nothing adverse to the policy conditions was brought on the record by *the opponent Insurance Company. Therefore, opponent Insurance Company is liable to satisfy the claims of the claimants.*

As per the decisions of the Hon'ble the Apex Court, in the ruling reported in ***2013 ACJ 2418 (SC)- Josphine James v. United India Insurance Co. Ltd. and another*** *and another ruling reported in* ***2012 ACJ 48 (SC)- Municipal Corporation of Delhi v. Association of Victims of Uphar Society,*** *it would be just and proper the award an interest @ 9% per annum on the awarded compensation. Thus, opponents are jointly & severally liable to pay amount of compensation to the claimant together with proportionate cost & interest @* ***9% p.a.*** *as awarded above. Hence, the following order is passed. Hence, issue no. 3 & 4 are answered accordingly.*

In view of the above discussion, reasons recorded and findings arrived, in the interest of justice, I pass following final Order.

:: ORDER ::

1. *The present claim petition is partly allowed against the opponent no. 1 to 3.*
2. *The opponents No. 1 to 3 are hereby ordered jointly and severally, to pay* ***Rs. 1,66,800/- (Rupees One Lac Sixty-Six Thousand Eight Hundred only)*** *as compensation to the claimant No.1 (MACP No. 419/2015) together with proportionate cost and interest @ 9% p.a. from the date of claim petition till realization.*
3. *The opponents No. 1 to 3 are hereby ordered jointly and severally, to pay* ***Rs. 2,42,000/- (Rupees Two Lac Forty-Two Thousand only)*** *as compensation to the claimant No. 2 (MACP No. 419/2015) together with proportionate cost and interest @ 9% p.a. from the date of claim petition till realization.*
4. *Amount of Court fees, if recoverable; be recovered from the awarded compensation and the same to be taxed as costs of the petition.*

5. *The interim amount of compensation, if any, paid or deposited under the principle of No Fault Liability, will be adjusted from the aforesaid amount of compensation awarded in this final adjudication.*

6. *After deducting the Court fees and NFL amount, the remaining amount is required to be disbursed to the claimant in proportion of 70% amount as a fixed deposit amount with any nationalized bank for a period of 5 years in the claimant's name and remaining 30% amount is required to be given to the claimant by way of account pay cheque after due identification only. As regards fixed deposit is concerned, no loan or any advance be drawn without prior consent of this Tribunal. However, the claimant will be entitled to withdraw periodical interest accrued on fixed deposit.*

7. *Parties shall bear their own cost.*

8. *The opponents shall follow the guidelines given in a case of* ***Hansagauri Prafulchandra Ladhani & others v. Oriental Insurance Company Ltd. & Ors. [2007 ACJ 1897 (DB) Guj.]*** *by the Hon'ble High Court of Gujarat,* ***with regard to the deduction of Income Tax, if applicable.***

9. *Award be drawn accordingly.*

Signed and pronounced in the open Court today on 31st January-2018 at Savli.

Savli.
Dt. 31.01.2018.

[D. J. Mehta]
(GJ00666)
M. A. C. Tribunal (Auxi)
15th Ad-hoc Addl. District Judge,
Vadodara at Savli.

(Mohd. Faisal) P.S.