| M.A.C.P.No. | 20/2021 | 21/2021 |
|---|---|---|
| Filed On | 01.04.2021 | 01.04.2021 |
| Registered On | 01.04.2021 | 01.04.2021 |
| Decided On | 22.04.2026 | 22.04.2026 |
| Duration | yy mm dd | yy mm dd |
| | | |

---

**IN THE COURT OF THE MOTOR ACCIDENT CLAIMS TRIBUNAL (MAIN), TAPI AT VYARA**

---

**M.A.C.P.NO.20/2021**

**EXH.**

**APPLICANTS:**

1 Kapilaben Dullabhbhai Chaudhari
Age:55 Yrs., Occu:House Hold Work,

2 Dullabhbhai Bhilabhai Chaudhari
Age:60 Yrs., Occu:Labour Work,
Both are Residing At : Dhamodala, Tal Valod, Dis. Tapi.

**VERSUS**

**OPPONENTS:-**

**Driver, Owner & Insurer of Eco Car bearing No. GJ-19-AF-8107:-**

**1 Kirankumar Shaileshbhai Vasava (Driver)**
Age: Adult, Occu:Driving.
Residing at : Usherkhud Faliyu,
Puna, Tal. Mandavi, Dis. Surat

**2 Shaileshbhai Natubhai Vasava(Owner)**
Age: Adult, Occu:Business,
Residing at : Puna(Nishal Faliyu),
Tal. Mandavi, Dis. Surat

**3 Royal Sundaram General Insurance Co. Ltd.**
Address : 510, Fifth Floor,
21 Century Building, Ring Road, Surat.

**M.A.C.P.NO.21/2021**

1 Surekhaben Wd/o Avanishbhai Chandubhai Chaudhari
Age:39 Yrs., Occu:House Hold Work,
2 Minor Chintan Avanishbhai Chaudhari
Age:10 Yrs., Occu:Study,
3 Chandubhai Makanbhai Chaudhari,
Age:68 Yrs., Occu:Retired
4 Ambaben Chandubhai Chaudhari,
Age:65 Yrs., Occu:House Hold Work,
All Are Residing At : Panchol,
(Sarkar Faliyu), Tal. Dolvan, Dis. Tapi.
**(claimant No.1 is a legal guardian of minor claimant no. 2)**

**VERSUS**

**OPPONENTS:-**

**Same as M.A.C.P. No.20/2021.**

---------------------------------------------------------------------------

**Appearances**

| | |
|---|---|
| **MR.A.L.Gamit** | Learned Advocates for the applicants, in MACP No.20/2021 & MACP No.21/2021 |
| **Ex- Parte** | For the Opponent no.1 & 2 |
| **Mr. B.P.Modi** | Learned Advocates For the Opponent no.3 |

**SUBJECT:- PETITIONS TO RECOVER COMPENSATION UNDER SECTION-166 OF THE MOTOR VEHICLES ACT, 1988**

**-: COMMON JUDGMENT :-**

1. These Claim petitions are preferred by the applicants - claimants under Section-166 of the M.V.Act, 1988. The applicants-claimants have filed **MACP No.20/2021 (main)** for obtaining compensation of **Rs.10,00,000/-** on account of sad demise of **Sunitaben Dallubhai Chaudhari** due to accidental by her. And **MACP No.21/2021** for obtaining

compensation of **Rs.25,00,000/-;** on account of sad demise of **Avanishbhai Chandubhai Chaudhari** due to accidental by him, in an accident that occurred on 24.10.2019, from the opponents jointly and severally, as stated in the title clause of the respective claim petitions.

2. The facts giving rise to present petitions in brief are as under:

   That the said unfortunate incident occurred on 24/10/2017 at around 1:30 p.m. near Vaghediya Chowkdi Bridge, No. 8, falling within the jurisdiction of Panigate Police Station, Vadodara, when the deceased Avnishbhai and the deceased Sunitaben were travelling together in Eco Car bearing No. GJ-19-AF-8107. When the said vehicle reached near the accident spot, the driver of the said vehicle, i.e., Opponent No. 1, drove the vehicle in a reckless and negligent manner, in complete disregard of traffic rules, lost control of the vehicle, pushed it over the divider and onto the opposite lane, whereupon it collided with another vehicle coming from the opposite direction. As a result of the said collision, both the deceased sustained serious injuries. While Avnishbhai succumbed to his injuries on the spot, Sunitaben was shifted to Smimer Hospital, Surat, for further treatment, where she subsequently died during the course of treatment. In respect of the said accident, an FIR was registered at Panigate Police Station, Vadodara, vide I C.R. No. 246/2017. The said accident occurred solely due to the rash and negligent driving of Opponent No. 1.

3. The applicants in claim petition i.e. **M.A.C.P.No.20/2021** who are the parents of the deceased have stated in their

petition that the deceased **Sunitaben Dallubhai Chaudhari** died in the accident, therefore, they are entitled to compensation of **Rs.10,00,000/-** under the head of future dependency loss, expenses on transportation, funeral ceremony etc. from the opponents. It is stated by the applicants that at the time of accident, deceased was of 30 years unmarried and was earning Rs.10,000/- p.m., by dong labour work, and maintaining her family. While, The applicant in claim petition i.e. **M.A.C.P.No.21/2021** who **a**re the wife, child and parents of the deceased, has stated in his petition that the deceased **Avanishbhai Chandubhai Chaudhari** died in the accident, therefore, they are entitled to compensation of **Rs.25,00,000/-** under the head of future dependency loss, expenses on transportation, funeral ceremony etc. from the opponents. It is stated by the applicants that at the time of accident, At the time of the accident, deceased was employed as a Driver-cum-Compounder at the Shri Aksharpurushottam Public Charitable Trust, BAPS Swaminarayan Mobile Hospital Centre, Bochasanwasi Sankari, and was drawing a monthly salary of Rs. 9,750/- , and maintaining his family.

4. Summons and notices of the claim petition were served upon the opponents. Opponent no.1 and 2 are neither appeared not filed any written statement before the Tribunal, hence, proceeded to ex-parte while opponent no.3 Royal Sundaram General Insurance Co. Ltd. appeared through its ld. Advocate.

The learned Advocate for Opponent No. 3, the Insurance

Company, appeared and filed written statements in both the claim petitions at Exh. 12 in MACP No. 20/2021 and at Exh. 17 in MACP No. 21/2021, the contents of which being substantially identical, are summarised together. The Insurance Company denied the claim petitions in their entirety, contending that the same are not maintainable, are barred by limitation, and suffer from misjoinder and non-joinder of necessary parties. It was specifically pleaded that the deceased were travelling as hire passengers in a private vehicle bearing No. GJ-19-AF-8107, which was carrying 09 passengers as against its statutory capacity of 05, thereby constituting a clear breach of the terms and conditions of the insurance policy. It was further contended that Opponent No. 1 was not holding a valid driving licence at the relevant time, and that there was non-compliance of the mandatory provisions under Sections 134(C) and 158(6) of the Motor Vehicles Act, 1988. On the aforesaid grounds, the Insurance Company urged that it be exonerated from liability and that the entire liability be fastened upon Opponent Nos. 1 and 2. Without prejudice, the Insurance Company sought protection under Sections 147, 149, and 170 of the Motor Vehicles Act. It was ultimately prayed that both the claim petitions be dismissed with costs.

5 Learned Advocate argued on behalf of Opponent No. 3, Royal Sundaram General Insurance Co. Ltd., has strongly opposed the claim petitions and submitted that in MACP No. 20/2021, the correct age of the deceased at the time of accident was 35 years as per her Aadhaar Card, and therefore

the applicable multiplier would be 16, and since no income proof has been produced, the income ought to be assessed at Rs. 5,000/- per month with 40% future prospects, and after deducting 1/2 towards personal expenses being unmarried, the total just compensation under all heads comes to Rs. 7,02,000/-; that in MACP No. 21/2021, the correct age of the deceased was 44 years as per his School Leaving Certificate and Driving Licence, and therefore the applicable multiplier would be 14, and since no income proof has been produced, the income ought to be assessed at Rs. 5,000/- per month with 25% future prospects, and after deducting 1/3 towards personal expenses, the total just compensation under all heads comes to Rs. 7,70,000/-; that on the point of liability, at the time of the accident, 9 passengers were travelling in the subject vehicle bearing Registration No. GJ-19-AF-8107, which was a privately registered Non-Transport vehicle with a seating capacity of only 5 persons as per the Registration Certificate at Exh. 65, and was being used to carry fare-paying passengers in clear breach of the policy conditions and in violation of the Motor Vehicles Act, as evidenced by the police complaint at Exh. 57 and the deposition of the State Legal Officer at Exh. 68, and the Private Car Package Policy at Exh. 66 does not cover the risk of hired passengers travelling beyond seating capacity, and therefore Opponent No. 3 ought to be exonerated from liability, and without prejudice, the principle of "Pay and Recover" be applied, and that the rate of interest, if any, be restricted to 6% per annum in accordance with the Interest Act, 1978, and accordingly prayed that the claim petitions be dismissed qua Opponent No. 3.

6 **<u>Evidence of the parties:</u>**

**<u>MACP NO.20/2021 & MACP NO.21/2021</u>**

In support of their case, the petitioners have adduced oral as well as documentary evidences as under:

**Oral Evidence of MACP No. 20/2021**

Ex.37 Oral evidence of Kapilaben Dullabhbhai Chaudhari

**Documentary Evidence of MACP No.20/2021**

Ex.57 True copy of Complaint

Ex.58 Photo copy of Panchnama of place of incident

Ex.59 Photo copy of Inquest panchnama of deceased **Sunitaben**

Ex.60 Photo copy of P.M.Report of deceased **Sunitaben**

Ex.61 Photo copy of Inquest panchnama of deceased **Avanishbhai**

Ex.62 Photo copy of P.M.Report of deceased **Avanishbhai**

Ex.63 Photo copy of charge sheet

Ex.65 R.C.Book of EECO Registration No.GJ-19-AF-8107

Ex.66 Insurance policy of EECO vehicle No.GJ-19-AF-8107

Ex.67 Copy of Adhar Card deceased **Sunitaben**

-----

**Oral Evidence of MACP No. 21/2021**

Ex.38 Oral evidence of Surekhaben Wd/o Avanishbhai Chandubhai Chaudhari

**Documentary Evidence of MACP No.21/2021**

Ex. 54 Driving licence of driver of offending vehicle No.GJ-19-AF-8107

Ex. 55 Driving licence of deceased **Avnishbhai**

Ex.34 School leaving certificate of deceased **Avnishbhai**

After adducing above oral and documentary evidence, claimants of MACP No.20/2021 and MACP No.21/2021 have passed closing Pushis vide Exh.64 and opponent no.3 has passed closing Pushis vide at Ex.69.

7. After considering the averments, made in the petitions as well as the defence taken in the written statements, the then Tribunal was pleased to frame issues vide **Exh.9 in M.A.C.P.No.20/2021** and vide **Exhs.9 in M.A.C.P.Nos.21/2021** respectively, which are similar and reproduced as under:

1 Whether the petitioners proves that they are dependents of the deceased ?

2 Whether the petitioners prove that the deceased died due to serious injuries sustained by him/her in a vehicular accident due to rash and negligent driving of driver of the vehicle involved in the accident ?

3 Whether the Petitioners are entitled to get compensation? If Yes, to what extent and from whom ?

4 What order and award ?

8. My findings on the above issues in the aforesaid claim petitions are as under :

1. In the affirmative.
2. In the affirmative.
3. Partly in affirmative.
4. As per final order.

## -: <u>REASONS</u> :-

9 **<u>Issues No.1</u>**

**<u>Common in both (MACP No.20/2021) & (MACP No.21/2021)</u>**

Both petitions arise out of the same motor accident involving the same respondents, however, both petitions involve different deceased persons and therefore entirely different sets of claimants. In **MACP No. 20/2021**, the claimants are the **father and mother of the deceased**, whereas in **MACP No. 21/2021**, the claimants are the **wife, minor child, father and mother of the deceased** of that petition. To prove their dependency, the respective claimants in both petitions have stepped into the witness box and deposed on oath that the respective deceased were the sole earning members of their families and that the claimants had no independent source of income of their own. The claimants in both petitions have further supported their oral evidence by placing on record documentary evidence including Aadhar Cards of the respective parents which indicates that claimants are the legal heirs of the deceased.

It is a well-settled legal position as laid down by the Hon'ble Supreme Court in **Sarla Verma v. DTC [(2009) 6 SCC 121]** and **National Insurance Co. Ltd. v. Pranay Sethi [(2017) 16 SCC 680]** that a wife, minor child and aged parents of a deceased earning member are recognized dependants and that even partial or substantial dependency is sufficient to sustain a claim under the Motor Vehicles Act, 1988. In the present case, the evidence on record in both petitions clearly and cogently establishes the relationship of each claimant with their respective deceased as well as their dependency upon his income. Accordingly, **Issue No. 1 in both MACP No. 20/2021 and MACP No. 21/2021 is Issue No.1 Answered in the AFFIRMATIVE.**

10 **Issue No.2**

**Common in both (MACP No.20/2021) & (MACP No.21/2021)**

Applicant No.1 of both the MACP No.20/2021 and 21/2021 have filed their affidavit under Order 18 Rule 4 of the Civil Procedure Code at Ex.37 - Kapilaben Dullabhbhai Chaudhari in MACP No.20/2021 and Ex.38- Oral evidence of Surekhaben Wd/o Avanishbhai Chandubhai Chaudhari in MACP 21/2021, Applicant No.1 of both the MACP have stated in their deposition that on 24/10/2017 at around 1:30 p.m. near Vaghediya Chowkdi Bridge, No. 8, falling within the jurisdiction of Panigate Police Station, Vadodara, when the deceased Avnishbhai and the deceased Sunitaben were travelling together in Eco Car bearing No. GJ-19-AF-8107. When the said vehicle reached near the accident spot, the driver of the said vehicle, i.e., Opponent No. 1, drove the vehicle in a reckless and negligent manner, in complete disregard of traffic rules, lost control of the vehicle, pushed it over the divider and onto the opposite lane, whereupon it collided with another vehicle coming from the opposite direction. As a result of the said collision, both the deceased sustained serious injuries. While Avnishbhai succumbed to his injuries on the spot, Sunitaben was shifted to Smimer Hospital, Surat, for further treatment, where she subsequently died during the course of treatment. In respect of the said accident, an FIR was registered at Panigate Police Station, Vadodara, vide I C.R. No. 246/2017. The said accident occurred solely due to the rash and negligent driving of Opponent No. 1.

The applicants in claim petition i.e. **M.A.C.P.No.20/2021** who are the parents of the deceased have stated in their petition that the deceased **Sunitaben Dallubhai Chaudhari** died in the accident, therefore, they are entitled to compensation of **Rs.10,00,000/-** under the head of future dependency loss, expenses on transportation, funeral ceremony etc. from the opponents. It is stated by the applicants that at the time of accident, deceased was of 30 years unmarried and was earning Rs.10,000/- p.m., by dong labour work, and maintaining her family. While, The applicant in claim petition i.e. **M.A.C.P.No.21/2021** who are the wife, child and parents of the deceased, has stated in his petition that the deceased **Avanishbhai Chandubhai Chaudhari** died in the accident, therefore, they are entitled to compensation of **Rs.25,00,000/-** under the head of future dependency loss, expenses on transportation, funeral ceremony etc. from the opponents. It is stated by the applicants that at the time of accident, At the time of the accident, deceased was employed as a Driver-cum-Compounder at the Shri Aksharpurushottam Public Charitable Trust, BAPS

Swaminarayan Mobile Hospital Centre, Bochasanwasi Sankari, and was drawing a monthly salary of Rs. 9,750/-, and maintaining his family.

10.1 Further, the applicants have produced a certified copy of the complaint vide Exh.57, Panchnama of the scene of offence vide Exh.58, Inquest Panchnama vide Exh.59 of **Sunitaben**, Post-Mortem Report vide Exh.60 of **Sunitaben**, Inquest Panchnama vide Exh.61 of **Avanishbhai**, Post-Mortem Report vide Exh.62 of **Avanishbhai.** Perusal of these documents reveals that the offending vehicle has been duly referred to in the said documents. These documents remain unrebutted.

Upon perusal of the complaint vide Exh.57, it appears that the said accident occurred due to rash and negligent driving of the offending Eco Car bearing No. GJ-19-AF-8107.

Upon perusal of the Panchnama of the Scene of Offence at Exh. 58, it is noted that at the place of the accident, scattered glass was found on the spot. A white coloured EECO vehicle bearing Registration No. GJ-19-AF-8107 was found at the scene in a damaged and accidental condition. On inspection of the said vehicle, it was found that the bonnet of the front side was damaged and pushed inward, the steering and seats were broken, the glass of both the front and rear sides was shattered, the body/panel of the vehicle was scraped and dented, the wheel of the driver's side had come off, and the rear tyre of the driver's side was punctured. The condition of the vehicle as reflected in the Panchnama and the scattered glass found at the spot are consistent with and clearly indicative of the occurrence of a serious vehicular accident at the said place.

Upon perusal of the Inquest Panchnama vide Exh.59 and 61 of both the deceased, it is evident that as per Column No. 12 - It is stated that the both the deceased died due to accident in which they sustained serious injuries on his head and other body parts. It transpires that the deceased died due to the said accident.

Upon perusal of the Post-Mortem Report vide Exh.60 and 62 of the both the deceased, in which stated that “shock as a result hemorrhage due to multiple injuries over body”. It transpires that the deceased died due to injuries sustained in the said accident.

Upon perusal of the record, it is noted that deceased Sunitaben- (MACP NO.20/2021) and Avanishbhai - (MACP No.21/2021) both three were travelling on the same EECO vehicle bearing Registration No. GJ-19-AF-8107 when the accident occurred, and both persons were died by driver negligence of driver of EECO vehicle bearing Registration No. GJ-19-AF-8107.

Considering the affidavit and documents on record, it is established that the deceased lost their life in the accident that occurred due to the rash and negligent driving of the driver of EECO vehicle bearing Registration No. GJ-19-AF-8107. Accordingly, Opponent No. 1 is held 100% negligent for the said accident. **Therefore, Issue No. 2 is decided in the Affirmative.**

11 **ISSUE NO.3 (MACP NO. 20/2021)**

**Entitlement of compensation**:

Once it is established that accident in question has occurred and it is also proved that deceased lost her 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 deceased was unmarried at the time of accident, and applicant no.1 and 2 are parents of deceased **Sunitaben** and hence the applicants have lost their family member, it also transpires that the deceased was an earning member and hence it is proved that applicant is entitled for compensation for death of **Sunitaben.**

11.1 **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.

11.2 **Claim for Future Loss of Income-Loss of Dependency**

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

11.3 **<u>Age :</u>** The Applicant No. 1 Kapilaben Dullabhbhai Chaudhari has filed her affidavit under Order 18 Rule 4 of the Civil Procedure Code, produced at Exh.37, stating that on the date of accident, the age of the deceased **Sunitaben** was 30 years unmarried. For proving the age of the deceased, the claimant has produced the Copy of Adhar Card of deceased **Sunitaben** vide Exh.67. As per the Adhar Card the date of birth is 01/04/1982, and the date of the accident is 24.10.2017. The age of the deceased has been shown as 35 years. Therefore, **this court has considered the age of the deceased as 35 years**. Since no dispute regarding the age of the deceased has been raised by the rival party, there is no hesitation to consider the age of the deceased as 35 years. Accordingly, as per the ratio laid down by the Hon'ble Apex Court in **2009 ACJ page 1298 Sarla Varma and Ors. Vs. Delhi Transport Corporation and Anr.**, multiplier of "**16**" is attracted.

11.4 **<u>Income:</u>**

It is stated by the applicant No.1 that the deceased was healthy and energetic at the time of the accident and was not having any type of disease. It is stated in the application that the deceased was earning Rs.10,000/- p.m., by dong labour work, and maintaining her family. The applicants have not submitted no any other proof of income of the deceased. Nevertheless, simply because the applicant has not been able to prove the monthly definite and regular income of the deceased, the claim in toto cannot be discarded. As per the guidelines issued by the High Court of Gujarat in the case of **Tulakiyabhai Nansingh Jamara Versus Dalbahadursingh Ranjitsingh Rajput 2025 (0) AIJEL-HC 250746**"*...In catena of decisions, law is settled that in absence of evidence with regard to income,* ***rates of minimum wages be considered by learned Tribunal.***" The date of accident in the present case is on 24.10.2017. so, considering the deceased as unskilled person, in absence of any proof of income, prevailing rate of minimum wages as per the Minimum Wages in Gujarat w.e.f 01.10.2017 to 31.03.2018 (during the above said period accident occurred), (as per minimum wages for **Zone-II, Rs.7,738/- per month for unskilled labour**. Hence, this Tribunal considers the monthly income of the deceased to be **Rs.7,738/- per month.**

11.5 As per the judgment of the Hon'ble Supreme Court in **National Insurance Co. Ltd. v. Pranay Sethi & Others**, decided on **31.10.2017** in **Special Leave Petition (Civil) No. 25590 of 2014**, the claimant is entitled to a **40%** enhancement towards future prospective income where the deceased was not a permanent employment and his age was 35 years (age below 40) at the time of accident. Accordingly, this Tribunal has considered the monthly income of **Rs.10,833/-** (being Rs.**7,738/-** per year + **Rs.3,095/-**, representing a **40%** increase on the base monthly income). Thus, the total monthly income of the deceased, including future prospects, is assessed at **Rs.10,833/-**.

11.6 **<u>Deduction towards personal expenditure :</u>**

So far as the determination of the deduction for personal and living expenses is concerned, as per the petition, deceased was unmarried at the time of accident, as per the guidelines issued by the **Hon'ble Supreme Court in the case of Sarla Verma (supra)**, and as per the petition, deceased was unmarried. Therefore, **1/2** is required to be deducted as personal expenditure of the deceased from his income.

Accordingly, **Rs.5,416/- (Rs.10,833/- × 1/2) is deducted** from the income of the deceased, and **Rs.5417/- represents the dependency loss** per month to the claimants**.**

**<u>Final Assessment</u>**

In view of the above-referred discussion, the dependency loss of the deceased is assessed as under:

**Monthly Income:** Rs.7,738/-

**Future prospective income:** Rs.3,095/- (**Add**)

**personal expenses of deceased:** <u>Rs.5,416</u>/- **(Less)**

**<u>Net income of the deceased</u>** <u>Rs.5,417/-</u>

**<u>Annual Calculation:</u>**

**Rs.**5,417**/- × 12 months × 16 multiplier (as the age of deceased was 35 years) = <u>Rs. 10,40,064/-</u>**

11.7 **<u>General & Non-pecuniary Damages</u>**: 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 Consortium, Funeral expenses, Loss of estate: But in the case of **Magna General Insuance Co. Ltd. Vs. Nanu Ram and others SPL(c) No.3192 of 2018 reported in 2018 ACJ 2782** the Hon'ble Apex Court gave a comprehensive interpretation to consortium to include spousal consortium, parental consortium, as well as filial consortium as under :

> *“In legal parlance, 'consortium' is a compendious term which encompasses 'spousal consortium', 'parental consortium' and 'filial consortium'.*
>
> *"The right to consortium would include the company, care, help, comfort, guidance, solace and affection to the deceased, which is a loss to his family. With respect to a souse, it would include sexual relations with the decease spouse[ Rajesh Vs. Rajbir Singh, 2013 ACJ 1403 (SC)].*
>
> ***Spousal consortium** is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of 'company, society, cooperation, affection, and aid of the other in every conjugal relation.*
>
> ***Parental consortium** is granted to the child, upon the premature death of a parent, for loss of 'parental aid, protection, affection, society, discipline, guidance and training'.*
>
> ***Filial consortium** is the right of the parents to*

*compensation in the case of an accidental death of child An accident leading to the death of a child causes great shock and agony to the parents family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children value for their love, affection, companionship and their role in the family unit.*

*Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions world over have recognized that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions therefore permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is a compensation for loss of the love, affection, care and companionship of the deceased child."*

Hence, in the present case this Tribunal relied upon the **Magna General Ins. Co. (Supra) and also United India Ins. Co. Vs. Satinder Kaur & Satwinder Kaur & Ors. Civil Appeal No. 2705/2020** decided on Dt.30/06/2020 and deem it appropriate to award the *Spousal*, Filial and parental Consortium of Rs.40,000/- each (i.e. 80,000/-) to applicants No.1 and No.2 are Parents of the deceased, hence calculation of each heads is given as under.

11.8 Therefore the claimant is entitled for the total compensation as under:.

| | |
|---|---|
| Rs.10,40,064/- | Loss of Dependency |
| Rs.15,000/- | Loss of Estate |
| Rs.15,000/- | Funeral Expenses |
| Rs.80,000/- | Loss of Consortium to claimants |
| **Rs.11,50,064/-** | **Net amount of compensation** |

As discussed here-in-above, the amount of compensation for the death of deceased in alleged accident comes to **Rs.11,50,064/- (Eleven Lakh Fifty Thousand Sixty-Four only).** which the claimants are awarded as the amount of compensation.

12 **<u>ISSUE NO.3 (MACP NO. 21/2021)</u>**

**<u>Entitlement of compensation</u>**:

Once it is established that accident in question has occurred and it is also proved that deceased 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 deceased was married at the time of accident, and applicant no.1 is wife and no.2 is child, and 2 & 3 are parents of deceased **Avanishbhai** and hence the applicants have lost his family member, it also transpires that the deceased was an earning member and hence it is proved that applicant is entitled for compensation for death of **Avanishbhai.**

12.1 **<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.

12.2 **Claim for Future Loss of Income-Loss of Dependency**

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

12.3 **Age :** The Applicant No. 1- Surekhaben Wd/o Avanishbhai Chandubhai Chaudhari has filed her affidavit under Order 18 Rule 4 of the Civil Procedure Code, produced at Exh.38, stating that on the date of accident, the age of the deceased **Avanishbhai** was 39 years married. For proving the age of the deceased, the claimant has produced the Copy of School leaving Certificate of deceased **Avanishbhai** vide Exh.34. As per the School leaving Certificate the date of birth is 04/11/1972, and the date of the accident is 24.10.2017. The age of the deceased has been shown as 44 years. Therefore, **this court has considered the age of the**

**deceased as 44 years**. Since no dispute regarding the age of the deceased has been raised by the rival party, there is no hesitation to consider the age of the deceased as 44 years. Accordingly, as per the ratio laid down by the Hon'ble Apex Court in **2009 ACJ page 1298 Sarla Varma and Ors. Vs. Delhi Transport Corporation and Anr.**, multiplier of "**14**" is attracted.

12.4 **Income:**

It is stated by the applicant No.1 that the deceased was healthy and energetic at the time of the accident and was not having any type of disease. It is stated in the application. At the time of the accident, deceased was employed as a Driver-cum-Compounder at the Shri Aksharpurushottam Public Charitable Trust, BAPS Swaminarayan Mobile Hospital Centre, Bochasanwasi Sankari, and was drawing a monthly salary of Rs. 9,750/-, and maintaining his family. Applicant have produced the copy of salary receipt of deceased but it is not exhibited and there is not examined regarding salary slip. Nevertheless, simply because the applicant has not been able to prove the monthly definite and regular income of the deceased, the claim in toto cannot be discarded. As per the guidelines issued by the High Court of Gujarat in the case of **Tulakiyabhai Nansingh Jamara Versus Dalbahadursingh Ranjitsingh Rajput 2025 (0) AIJEL-HC 250746**"...*In catena of decisions, law is settled that in absence of evidence with regard to income, **rates of minimum wages be considered by learned Tribunal**.*"

The date of accident in the present case is on 24.10.2017. so, considering the deceased as unskilled person, in absence of any proof of income, prevailing rate of minimum wages as per the Minimum Wages in Gujarat w.e.f 01.10.2017 to 31.03.2018 (during the above said period accident occurred), (as per minimum wages for **Zone-II, Rs.7,738/- per month for unskilled labour**. Hence, this Tribunal considers the monthly income of the deceased to be **Rs.7,738/- per month.**

**12.5)** As per the judgment of the Hon'ble Supreme Court in **National Insurance Co. Ltd. v. Pranay Sethi & Others**, decided on **31.10.2017** in **Special Leave Petition (Civil) No. 25590 of 2014**, the claimant is entitled to a **25%** enhancement towards future prospective income where the deceased was not a permanent employment and his age was 44 years (age between 40 to 50) at the time of accident. Accordingly, this Tribunal has considered the monthly income of **Rs.9,673/-** (being Rs.**7,738/-** per year + **Rs.1,935/-**, representing a **25%** increase on the base monthly income). Thus, the total monthly income of the deceased, including future prospects, is assessed at **Rs.9,673/-**.

12.6 **Deduction towards personal expenditure :**

So far as the determination of the deduction for personal and living expenses is concerned, as per the petition, deceased was married at the time of accident he has four dependent i.e. wife, child and parents, as per the guidelines issued by the **Hon'ble Supreme Court in the**

**case of Sarla Verma (supra)**, and as per the petition, deceased was unmarried. Therefore, **1/4** is required to be deducted as personal expenditure of the deceased from his income.

Accordingly, **Rs.2,418/- (Rs.9,673/- × 1/4) is deducted** from the income of the deceased, and **Rs.7,255/- represents the dependency loss** per month to the claimants**.**

**Final Assessment**

In view of the above-referred discussion, the dependency loss of the deceased is assessed as under:

**Monthly Income:** Rs.7,738/-

**Future prospective income:** Rs.1,935/- (**Add**)

**personal expenses of deceased:** Rs.2,418/- **(Less)**

**Net income of the deceased Rs.7,255/-**

**Annual Calculation:**

**Rs.7,255/- × 12 months × 14 multiplier (as the age of deceased was 44 years) = Rs. 12,18,840/-**

12.7 **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 Consortium, Funeral expenses, Loss of estate: But in the case of **Magna General Insuance Co. Ltd. Vs. Nanu Ram and others SPL(c) No.3192 of 2018 reported in 2018 ACJ 2782** the Hon'ble Apex Court gave a comprehensive interpretation to consortium to include spousal consortium, parental consortium, as well as filial consortium as under :

> *"In legal parlance, 'consortium' is a compendious term which encompasses 'spousal consortium', 'parental consortium' and 'filial consortium'.*
>
> *"The right to consortium would include the company, care, help, comfort, guidance, solace and affection to the deceased, which is a loss to his family. With respect to a souse, it would include sexual relations with the decease spouse[ Rajesh Vs. Rajbir Singh, 2013 ACJ 1403 (SC)].*
>
> ***Spousal consortium** is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of 'company, society, cooperation, affection, and aid of the other in every conjugal relation.*
>
> ***Parental consortium** is granted to the child, upon the premature death of a parent, for loss of 'parental aid, protection, affection, society, discipline, guidance and training'.*
>
> ***Filial consortium** is the right of the parents to compensation in the case of an accidental death of child An accident leading to the death of a child causes great shock and agony to the parents family of the deceased. The greatest agony for a parent is to lose their child during*

*their lifetime. Children value for their love, affection, companionship and their role in the family unit.*

*Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions world over have recognized that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions therefore permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is a compensation for loss of the love, affection, care and companionship of the deceased child.”*

Hence, in the present case this Tribunal relied upon the **Magna General Ins. Co. (Supra) and also United India Ins. Co. Vs. Satinder Kaur & Satwinder Kaur & Ors. Civil Appeal No. 2705/2020** decided on Dt.30/06/2020 and deem it appropriate to award the *Spousal*, Filial and parental Consortium of Rs.40,000/- each (i.e. 1,60,000/-) to applicants No.1 is wife, No.2 is son, and No.3 & 4 are Parents of the deceased, hence calculation of each heads is given as under.

12.8 Therefore the claimant is entitled for the total compensation as under:.

| | |
|---|---|
| Rs.12,18,840/- | Loss of Dependency |
| Rs.15,000/- | Loss of Estate |
| Rs.15,000/- | Funeral Expenses |
| Rs.1,60,000/- | Loss of Consortium to claimants |
| **Rs.14,08,840/-** | **Net amount of compensation** |

As discussed here-in-above, the amount of compensation for the death of deceased in alleged accident comes to **Rs.14,08,840/- (Fourteen Lakh Eight Thousand Eight Hundred Forty only).** which the claimants are awarded as the amount of compensation.

**Common para in MACP NO.20/2021 & 21/2021**

13 **Interest :-**

The claimants have claimed Rs.10,00,000/- with 15% interest in MACP No. 20/2021, and Rs.25,00,000 with 15% interest in MACP No.21/2023 from the opponents, but as per the guidelines issued by the High Court of Gujarat in the case of interest from the opponents, but looking to the Judgment of **Saroj & Ors. Versus Iffco-tokio General Insurance Co.& Ors., 2024 (0) AIJEL-SC 74160 SUPREME COURT OF INDIA "***...the interest awarded, we find there to be no reason recorded by the High Court in the reduction of the rate of interest. The High Courts cannot lose sight of the fact that compensation received by way of claims led before MACT is either born out of injury or death of the claimant or family member of the claimants and so, the amount awarded must do justice to them. It necessarily has to be just and reasonable. In that view of the matter, we find it t* *to enhance the rate of interest to 8% to be paid from the date of ling of the claim petition."* Hence, the applicant is entitled to get simple interest @ **8% per annum** on the amount of compensation, from the date of filing of this application, till actual realization thereof.

14 **Liability**

Regarding the issue of liability, upon perusal of the **FIR, Panchnama of the Scene of Offence, Inquest Panchnama, Post-Mortem Report**, and the testimony of the respective claimants, it is established that the deceased **Sunitaben and Avnishbhai** succumbed to fatal injuries sustained in the subject accident caused by the **EECO vehicle bearing Registration No. GJ-19-AF-8107**. The registration and insurance particulars placed on record confirm that the offending vehicle was validly insured with **Opponent No. 3** at the material time of the accident. The learned Advocate appearing on behalf of the Insurance Company has vehemently contended that the insurer ought to be exonerated from liability on three primary grounds, namely that the offending vehicle was carrying **09 passengers** against its statutory seating capacity of **05**, thereby constituting a breach of the terms of the policy, that the deceased were travelling as passengers for **hire** in a private vehicle in violation of the **'Limitation as to Use'** clause of the insurance policy, and that **Opponent No. 1** did not hold a valid and effective driving licence at the relevant time and had further failed to comply with the mandatory provisions of **Sections 134(C) and 158(6) of**

**the Motor Vehicles Act, 1988**. The said contentions have been duly considered by this Tribunal.

While the aforesaid contentions of the learned Advocate for the Insurance Company may prima facie suggest a fundamental breach of the insurance contract between the Insurer and the Insured, they do not, in the considered opinion of this Tribunal, absolve the Insurer of its primary statutory obligation towards third-party claimants. The legal position in this regard stands well settled and has been recently reaffirmed by the Hon'ble Supreme Court in **Kaminiben & Ors. v. The Oriental Insurance Company Ltd. & Ors. [SLP (Civil) No. 21802/2023]**, wherein the Apex Court reiterated that even in cases where the deceased was a gratuitous or unauthorized passenger, or where the terms and conditions of the insurance policy were breached, the principle of **"Pay and Recover"** must be invoked so as to protect the interests of the victims and their legal heirs. Following the said mandate, even if this Tribunal were to accept that the offending vehicle was being used in violation of its permit conditions or beyond its permissible seating capacity, such breach is a matter **inter se** between the Insurer and the Insured and cannot be permitted to be used as a ground to deny the claimants their legitimate right to compensation. Accordingly, in light of the settled legal position, **Opponent No. 3 the Insurance Company is directed to first satisfy the award** passed in favour of the respective claimants in both petitions and shall thereafter be at liberty to **recover the**

**said amount from Opponent Nos. 1 and 2** i.e. the Driver and the Owner of the offending vehicle.

15 Hence, issue no.3 is answered partly in partly Affirmative and for issue no.4 following final award in the interest of justice.

**M.A.C.P.No.20/2021:-**

**:: O R D E R ::**

**(1)** The petition is hereby **partly allowed** in favour of petitioners, with proportionate costs and interest against opponent no.3.

**(2)** The petitioners do recover **Rs.11,50,064/- (Eleven Lakh Fifty Thousand Sixty-Four only)** from the Opponent No.3, with running interest at the rate of **8% per annum** from the date of petition till realization of the amount along with proportionate costs of the petition.

**(3)** The opponent no.3 is 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 under Section 140 of the Motor Vehicles Act, within one month from the date of this order.

**(4)** The **insurer shall have the right to recover the amount** so paid from the opponents i.e. owner/driver of the vehicle, subject to proof of breach of policy conditions, as per the terms of the insurance policy and in accordance with law.

**(5)** **For the disbursement of the award amount of compensation, applicant no.1 & 2 will be entitled 50% (each),(equal distribution).**

**(6)** From the compensation amount apportioned **30% shall be**

**disbursed immediately to the said claimants by way of account payee** cheque/demand draft. The **balance 70% amount shall be invested in a Fixed Deposit** in the name of the said claimants in any nationalized bank as may be nominated by the claimants, for a period of five (5) years.

**(7)** The opponents shall 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.

**(8)** On depositing the above amount of award by the opponent no.3 in this Tribunal, the amount of Court Fee Stamp, if recoverable on the awarded amount, shall be recovered from the awarded amount and the same shall be taxed as the costs of the petition.

**(9)** Award shall be drawn accordingly.

**TERMS AND CONDITIONS FOR INVESTMENT**

**(a)** The said amount shall be invested with any of the nationalized Banks of the choice of the applicant in Fixed Deposit Receipt Account.

**(b)** 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 applicants.

**(c)** 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.

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

**(e)** 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.

**(f)** At the end of the period aforesaid, the Bank shall pay the principal amount to the payee, the concerned applicants.

-----

**M.A.C.P.No.21/2021:-**

**:: O R D E R ::**

**(1)** The petition is hereby **partly allowed** in favour of petitioners, with proportionate costs and interest against opponent no.3.

**(2)** The petitioners do recover **Rs.14,08,840/- (Fourteen Lakh Eight Thousand Eight Hundred Forty only)** from the Opponent No.3, with running interest at the rate of **8% per annum** from the date of petition till realization of the amount along with proportionate costs of the petition.

**(3)** The opponent no.3 is 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 under Section 140 of the Motor Vehicles Act, within one month from the date of this order.

**(4)** The **insurer shall have the right to recover the amount** so paid from the opponents i.e. owner/driver of the vehicle, subject to proof of breach of policy conditions, as per the terms of the insurance policy and in accordance with law.

**(5)** **For the disbursement of the award amount of**

**compensation, all the applicants will be entitled equal distribution(25% each).**

**(6)** From the compensation amount applicant no.1,3 and 4 **30% shall be disbursed immediately to the said claimants by way of account payee** cheque/demand draft. The **balance 70% amount shall be invested in a Fixed Deposit** in the name of the said claimants in any nationalized bank as may be nominated by the claimants, for a period of five (5) years.

**(7)** The entire compensation amount of **claimant No.2 Minor Chintan Avanishbhai Chaudhari, shall be invested in a Fixed Deposit** in the name of the said minor in any nationalized bank as may be nominated by the guardian through **claimant No.1 as her legal guardian,. The Fixed Deposit shall be made for a period of five (5) years or until the minor attains majority, whichever is later.** No premature withdrawal or loan/advance against the said Fixed Deposit shall be permitted without prior permission of this Tribunal.

**(8)** The opponents shall 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.

**(9)** On depositing the above amount of award by the opponent no.3 in this Tribunal, the amount of Court Fee Stamp, if recoverable on the awarded amount, shall be recovered from the awarded amount and the same shall be taxed as the costs of the petition.

**(10)** Award shall be drawn accordingly.

**TERMS AND CONDITIONS FOR INVESTMENT**

**(a)** The said amount shall be invested with any of the nationalized Banks of the choice of the applicant in Fixed Deposit Receipt Account.

**(b)** 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 applicants.

**(c)** 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.

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

**(e)** 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.

**(f)** At the end of the period aforesaid, the Bank shall pay the principal amount to the payee, the concerned applicants.

**Pronounced in the open Court, today on this 22th day of April, 2026**.

Place:Tapi @ Vyara
Date :22/04/2026.

(**Tejaskumar Ranjitbhai Desai**)
**M.A.C.T (Main),**
**Tapi @ Vyara**
**Code No.: GJ00593)**

B.S.Panwar