Motor Accident Claim Petition Nos.627/2010 to 629/2010	
Filing Date :	25.08.2010
Registered Date:	25.08.2010
Decided on:	21.04.2018
Duration :	Year-Month-Days
	07 - 07 - 16

BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL (MAIN) MAHESANA,

AT : MAHESANA.

[BEFORE D.A.JOSHI]

COMMON JUDGEMENT PASSED
IN

MOTOR ACCIDENT CLAIM PETITION
NOS.**627/2010, 628/2010 AND 629/2010.**

(MAIN M.A.C.P.NO.627/2010)

EXH.183.

APPLICANTS OF M.A.C.P.NO.627/2010 :-

Legal heir of deceased
KALPESHKUMAR RAMDAS PATEL :

(1) PATEL JALPABEN KALPESHKUMAR,
Age: 28 years, Occupation :- Household,

(2) PATEL DIYA KALPESHKUMAR, (MINOR)
Age: 8 years, Occupation :- Study,

(3) PATEL YUG KALPESHKUMAR (MINOR)
Age: 6 years, Occupation :- Study,

(4) PATEL RAMDAS KARSHANDAS
Age: 68 years, Occupation :- Retired,

(5) PATEL HIRABEN RAMDAS,
Age: 63 years, Occupation :- Retired,

Petitioner Nos.2 and 3 being minors – through their Guardian and Mother – Petitioner No.1,

All Residing of 16, Sahajanand Society, Malgodown Road, Mahesana-2.

V/S.

OPPONENTS :-

(1) **DRIVER OF TRUCK NO.GJ-7-X-4950** :-

RATHVA FULSINH CHAMANBHAI,
R/o.Village : Jamala,
Ta.Chhota Udepur,
District : Vadodara.

(2) **OWNER OF TRUCK NO.GJ-7-X-4950** :-

HANIFBHAI AHMEDBHAI RALIYA,
R/o.92, Station Zoz Road,
Chhota Udepur,
District : Vadodara.

(3) **INSURANCE COMPANY OF TRUCK NO.GJ-7-X-4950** :-

SHREE RAM GENERAL INSURANCE CO. LTD.,
207, Second Floor, Panorama Complex,
Alkapuri, Vadodara.
Policy No.213044/31/10/000843,
Policy Period :23.10.2009 to 22.10.2010.

(4) **DRIVER OF CAR NO.GJ-2-AP-2024** :-

PATEL HITESHKUMAR AMRUTLAL,
R/o.Village : Karshanpura,
Ta. Dist.Mahesana.

(5) **INSURANCE COMPANY OF CAR NO.GJ-2-AP-2024**:-

CHOLAMANDALAM MS GENERAL INSURANCE CO. LTD.,
Ketul Chambers, Highway,
Mahesana.
Cover Note No.7806985,
Policy Period : 08.01.2010 to 07.01.2011.

SUBJECT :- CLAIM PETITION FOR **RS.1,00,00,000/-**
U/S.166 OF THE M.V.ACT.

***** ***** *****

APPLICANTS OF M.A.C.P.NO.628/2010 :-

Legal heir of deceased
ANANTKUMAR BABULAL PATEL :

(1) PATEL HETALBEN ANANTKUMAR,
Age: 28 years, Occupation :- Vidhya Sahayak,

(2) PATEL SHREY ANANTKUMAR, (MINOR)
Age: 3 years, Occupation :- Nil,

(3) PATEL BABULAL RAMDAS,
Age: 58 years, Occupation :- Retired,

(4) PATEL PASIBEN BABULAL,
Age: 56 years, Occupation :- Household,

Petitioner No.2 being minor – through
his Guardian and Mother – Petitioner No.1,

All Residing of C-6, Surya Mandir Society,
Modhera Road, Opp. Nirma Factory,
Mahesana-2.

V/S.

OPPONENTS :-

(1) **DRIVER OF TRUCK NO.GJ-7-X-4950** :-

RATHVA FULSINH CHAMANBHAI,
R/o.Village : Jamala,
Ta.Chhota Udepur,
District : Vadodara.

(2) **OWNER OF TRUCK NO.GJ-7-X-4950** :-

HANIFBHAI AHMEDBHAI RALIYA,
R/o.92, Station Zoz Road,
Chhota Udepur, District : Vadodara.

(3) **INSURANCE COMPANY OF TRUCK NO.GJ-7-X-4950** :-

SHREE RAM GENERAL INSURANCE CO. LTD.,
207, Second Floor, Panorama Complex,
Alkapuri, Vadodara.
Policy No.213044/31/10/000843,
Policy Period :23.10.2009 to 22.10.2010.

(4) **DRIVER OF CAR NO.GJ-2-AP-2024** :-

PATEL HITESHKUMAR AMRUTLAL,
R/o.Village : Karshanpura,
Ta. Dist.Mahesana.

(5) **OWNER OF CAR NO.GJ-2-AP-2024** :-

KALPESHKUMAR RAMDAS PATEL :
Died, through his legal heirs :

5/1. PATEL JALPABEN KALPESHKUMAR,
Age: 28 years, Occupation :- Household,

5/2. PATEL DIYA KALPESHKUMAR, (MINOR)
Age: 8 years, Occupation :- Study,

5/3. PATEL YUG KALPESHKUMAR (MINOR)
Age: 6 years, Occupation :- Study,

5/4. PATEL RAMDAS KARSHANDAS
Age: 68 years, Occupation :- Retired,

5/5. PATEL HIRABEN RAMDAS,
Age: 63 years, Occupation :- Retired,

Opponent Nos.5/2 and 5/3 being minors – through their Guardian and Mother – Opponent No.5/1

All Residing of 16, Sahajanand Society,
Malgodown Road, Mahesana-2.

(6) **INSURANCE COMPANY OF CAR NO.GJ-2-AP-2024**:-

CHOLAMANDALAM MS GENERAL INSURANCE CO. LTD.,
Ketul Chambers, Highway, Mahesana.
Cover Note No.7806985,
Policy Period : 08.01.2010 to 07.01.2011.

SUBJECT :- CLAIM PETITION FOR **RS.20,00,000/-** U/S.166 OF THE M.V.ACT.

***** ***** *****

APPLICANTS OF M.A.C.P.NO.629/2010 :-

PATEL HITESHKUMAR AMRUTLAL,
Age: 31 years, Occupation :- Service,
Residing of Village : Karshanpura,
Ta. District : Mahesana.

V/S.

OPPONENTS :-

(1) **DRIVER OF TRUCK NO.GJ-7-X-4950** :-

RATHVA FULSINH CHAMANBHAI,
R/o.Village : Jamala,
Ta.Chhota Udepur, District : Vadodara.

(2) **OWNER OF TRUCK NO.GJ-7-X-4950** :-

HANIFBHAI AHMEDBHAI RALIYA,
R/o.92, Station Zoz Road,
Chhota Udepur, District : Vadodara.

(3) **INSURANCE COMPANY OF TRUCK NO.GJ-7-X-4950** :-

SHREE RAM GENERAL INSURANCE CO. LTD.,

207, Second Floor, Panorama Complex,
Alkapuri, Vadodara.
Policy No.213044/31/10/000843,
Policy Period :23.10.2009 to 22.10.2010.

SUBJECT :- CLAIM PETITION FOR **RS.19,00,000/-**
U/S.166 OF THE M.V.ACT.

Appearance :

Mr.K.V.Patel, : Learned advocate for the applicants of M.A.C.P.No.627/2010
Mr.H.A.Prajapati, : Learned advocate for the applicants of M.A.C.P.No.628/2010
Mr.B.G.Patel, : Learned advocate for the applicants of M.A.C.P.No.629/2010

Mr.S.I.Shah : Learned advocate for the Shree Ram General Insurance Co. Ltd. (in all cases)
Mr.B.G.Patel : Learned advocate for the opponent No.4 in M.A.C.P.No.627/2010.
Mr.N.R.Bhavsar : Learned advocate for the Cholamandalam MS General Insurance Co.Ltd.

Opponent Nos.1 & 2: Absent, though duly served in M.A.C.P.Nos.627/2010 and 629/2010.
Opponent Nos.1,2,4 & 5 : Absent, though duly served in M.A.C.P.No.628/2010.

-:: COMMON JUDGEMENT ::-

[1] All these petitions have arisen out of the common incident, and hence these petitions are consolidated and tried together for convenience of the Court as well as parties, considering Motor Accident Claim Petition No.627 of 2010 as main claim petition.

[2] Claim Petition No.627/2010 has been filed by the claimants i.e. legal heirs of Patel Kalpeshkumar Ramdas

under Section 166 of the Motor Vehicles Act to recover the amount of Rs.1,00,00,000/- on account of death of deceased Patel Kalpeshkumar Ramdas and Claim Petition No.628/2010 has been filed by the claimants i.e. legal heirs of Patel Anantkumar Babulal under Section 166 of the Motor Vehicles Act to recover the amount of Rs.20,00,000/- on account of death of deceased Patel Kalpeshkumar Ramdas and Claim Petition No.629/2010 has been filed by the claimant under Section 166 of the Motor Vehicles Act to recover the amount of Rs.19,00,000/- towards compensation with interest and costs, on account of injuries caused to him, in motor vehicular accident which was occurred on 13.06.2010, on Balasinor-Kathlal Road, near Bakul Farm, Balasinor.

[3] The brief facts of these claim petitions are as under :-

On the date of accident on 13.06.2010 deceased Kalpeshkumar Ramdas Patel, deceased Anantkumar Babulal Patel were travelling in the Car No.GJ-2-AP-2024 and were returning from Balasinor towards Mahesana and at that time said car was driven by injured – Hiteshkumar Amrutlal Patel and when said car reached at the place of accident on Balasinor-Kathlal road, the driver of Truck No.GJ-7-X-4950 came from opposite direction with very high speed and in rash and negligent manner and dashed with the car in which deceased and injured persons were travelling, with the result Kalpeshkumar Ramdas Patel and Anantkumar Babulal Patel have sustained serious injuries and died on the spot and the person who was driving said car – Hiteshkumar Amrutlal Patel has sustained serious injuries. A complaint came to be registered before the Balasinor Police Station, vide I.Cr.No.43/2010.

[4] All the opponents are duly served with the notice of the claim petitions. The Opponent Nos.1 and 2 did not appear before the Tribunal. The opponent No.4 appeared through their learned advocate Mr.S.G.Shah and filed Written Statement to the petition at Exh.142 and denied the facts of claim petition. It is contended by the opponent No.3 that, the driver of the said vehicle was not having valid and effective driving licence to drive said vehicle. It is further contended that, at the time of accident said vehicle was not having valid fitness certificate and therefore, also there is breach of terms and conditions of the insurance policy. It is further contended that, at the place of accident due to bad shape of road the driver of the car had moved his car in

middle of the road and therefore, the truck driver was not able to avoid said accident and thus said accident had taken place due to absolute rash and negligent driving on the part of car driver and therefore, opponent No.3 is not liable to pay compensation to the petitioners.

[5] Opponent No.4 appeared through his learned advocate Mr.B.G.Patel and has filed Written Statement vide Exh.14 and denied the facts of claim petition. It is contended by the opponent No.4 that, said accident had taken place due to absolute rash and negligent driving on the part of Truck driver and therefore, opponent No.4 is not liable to pay compensation to the petitioners. In alternate it is contended by the opponent No.4 that, at the time of accident he was possession valid and effective driving license and at the time of accident said vehicle was insured with the opponent No.5 and therefore, if at all Honourable Tribunal comes to the conclusion that, opponent No.4 is liable to pay compensation, if any, in that event on behalf of opponent No.4, opponent No.5 is liable to pay compensation to the petitioners.

[6] The Opponent No.4 appeared through their learned advocate Mr.N.R.Bhavsar but has not filed reply in time

hence right to submit reply to the petition was closed by the Tribunal. Then after by way of Exh.99 one pursis was submitted by the learned advocate Mr.Bhavsar for the purpose of opening of rights to file Written Statement. Said application was submitted by the learned advocate Shri Bhavsar at a belated stage and it was not considered by the Court. During the course of verification of Records and Proceedings, it is found that Written Statement submitted by the opponent No.5 is the part and parcel of the records but said document is not duly exhibited by the Tribunal and therefore, it cannot be relied upon and proper weightage cannot be given to the said reply at the time of appreciating the documents available on records.

[7] Considering the above mentioned pleadings following issues are framed in M.A.C.P.Nos.627/2010 and 628/2010 for the determination of these petitions, which are as under :-

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

(1) Whether claimant proved that the deceased sustained injuries and died on account of rashness or negligence on the part of driver of the vehicle involved in the accident ?

(2) What amount, if the claimant/s is/are entitled to, by way of compensation and from which of the opponent ?

(3) What order and award ?

[8] Considering the above mentioned pleadings following issues are framed in M.A.C.P.No.629/2010 for the determination of this petition, which are as under :-

: I S S U E S:

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

(2) What amount, if the claimant is entitled to, by way of compensation and from which of the opponent ?

(3) What order and award ?

[9] My findings on the above issues in all cases are as under:-

(1) In the affirmative

(2) As per final order.

(3) As per final order.

:: REASONS ::

[10] I have read oral and documentary evidence of the petitioners which are on records as well as I have heard the oral arguments of learned advocates appearing on behalf of the rival parties. On behalf of Shree Ram General Insurance Co. Ltd. learned advocate Shri S.G.Shah had appeared & produced documentary evidences and also cross-examined the witnesses but during the course of pendency of these claim petitions he is relieved as learned advocate of the said company and in his place learned

advocate Mr.S.I.Shah has filed his Vakalatnama (appearance) on behalf of Shree Ram General Insurance Co. Ltd. I have also gone through the Written arguments submitted on behalf of claimants at Exh.166 and 167 along with following citations :-

1.	**1999(2) GCD 1463 (SC)** VIDHYADHAR v. MANKIKRAO
2.	**2009 ACJ 1298** SARLA VERMA AND OTHERS v. DELHI TRANSPORT CORPORATION
3.	**2014 ACJ 704** PAWAN KUMAR v. HARKISHAN DASS MOHAN LAL
4.	**2016 ACJ 1** KAMLESH AND OTHER V. ATTAR SINGH AND OTHERS
5.	**2013 ACJ 1403** RAJESH AND OTHERS v. RAJBIR SINGH AND OTHERS
6.	**2014 ACJ 1388** KALPANARAJ AND OTHERS v. TAMIL NADU STATE TRANSPORT CORPORATION
7.	**2013 ACJ 1441** VIMAL KANWAR AND OTHERS v. KISHORE DAN AND OTHERS
8.	**2014 ACJ 1342** NATIONAL INSURANCE CO. LTD. v. AMAN KAPUR AND OTHERS

I have also gone through the Written Arguments, submitted on behalf of opponent No.3 – Shree Ram General Insurance Co. Ltd. vide Exh.180 to 182 and Written Arguments, submitted on behalf of opponent No.5 – Cholamandalam MS General Insurance Co. Ltd. vide

Exh.76 and 177 and also considered the citations cited by both the parties. Before I proceed to appreciate the evidence, the following documents are required to be referred to since they have been taken into consideration for determination of just and adequate compensation :-

Sr. No.	Particulars	Exh. No.
	M.A.C.P.NO.627 OF 2010	
1.	Copy of F.I.R.	49
2.	Copy of Panchnama	50
3.	Copy of Inquest Panchnama of deceased Kalpeshkumar Ramdas Patel	51
4.	Copy of Post Mortem Note of deceased Kalpeshkumar Ramdas Patel	52
5.	Copy of Charge Sheet filed by the Kheda Police Station	53
6.	Copy of Mark-Sheet of B.B.A. of deceased Kalpeshkumar Ramdas Patel	54
7.	Copy of School Leaving Certificate of deceased Kalpeshkumar Ramdas Patel	55
8.	Copy of Partnership-Deed of M/s.Gayatri Plastics.	85
9.	Copy of Partnership-Deed of P.K.Pipe Dealers.	128
10.	Copy of PAN Card of deceased Kalpeshkumar Ramdas Patel	56
11.	Copy of Death Certificate of deceased Kalpeshkumar Ramdas Patel	156
12.	Copy of letter written to the Sales-Tax Officer by the partner of Gayatri Plastics	86
13.	Copy of License of Gayatri Plastics and Steel – Proprietary Firm	87
14.	Copy of License for Import-Export	88
15	Copy of Income-Tax Return of deceased Kalpeshkumar Ramdas Patel for the year 2007-2008	107
16.	Copy of Income-Tax Return of deceased Kalpeshkumar Ramdas Patel for the year 2008-2009	108

17.	Copy of Income-Tax Return of deceased Kalpeshkumar Ramdas Patel for the year 2009-2010	109
18.	Copy of Income-Tax Return of deceased Kalpeshkumar Ramdas Patel for the year 2010-2011	110
19.	Income-Tax Audit Report of P.K.Pipes for the Year 2011-12	129
20.	Income-Tax Audit Report of P.K.Pipes for the Year 2012-13	130
21.	Copy of Driving License of the driver of Truck No.GJ-7-X-4950	157
22.	Copy of R.C.Book of Truck No.GJ-7-X-4950	158
23.	Copy of Driving License of the driver of Car No.GJ-02-AP-2024	159
24.	Copy of R.C.Book of Car No.GJ-02-AP-2024	160
25.	Copy of Insurance Policy of Car No.GJ-02-AP-2024	161
	M.A.C.P.NO.628 OF 2010	
26.	Copy of Post Mortem Note of deceased Anantkumar Babulal Patel	57
27.	Copy of Death Certificate of deceased Anantkumar Babulal Patel	58
28.	Copy of PAN Card of deceased Anantkumar Babulal Patel	59
29.	Copy of School Leaving Certificate of deceased Anantkumar Babulal Patel	60
30.	Copy of Degree Certificate of deceased Anantkumar Babulal Patel	61
31.	Copy of Degree Certificate of deceased Anantkumar Babulal Patel	62
	M.A.C.P.NO.629 OF 2010	
32.	Salary Statement of injured Hiteshkumar from March-2011 to February-2013.	124
33.	Copy of Transfer Form of injured petitioner –Hiteshkumar	63
34.	Copy of Admission Certificate of injured, issued by Apollo Hospital	64
35	Copy of Treatment Certificate of injured, issued by Apollo Hospital	65
36.	Copies of Receipts of amount	113

	deposited by the injured in Apollo Hospital	
37.	Copy of Medical Bills	114
38.	Copies of Summary Chart of the medical bills of Rs.4,47,146/-	115
39.	X-Ray Report, Laboratory Reports and C.T.Scan Reports of the injured	116
40.	Discharge Summary, issued by Apollo Hospital.	117
41.	Prescription, issued by Apollo Hospital for exercise	66
42.	Medical Bills	162 to 165
43.	Medical Bills	67 to 73
44.	Disability Certificate, issued by Dr.Kamlesh T.Gurjar, Orthopedic Surgeon, Mahesana	90
45.	Disability Certificate, issued by Dr.Kiritbhai Patel, Plastic Surgeon, Mahesana	92
46.	Receipt of Rs.2,58,014/- received by the injured out of Rs.4,25,000/-	136
47.	Copy of Demand Draft of Rs.2,58,014/- received by the injured out of Rs.4,25,000/-	137
48.	Pay Slip, issued by Starline Cars Private Limited	119
49.	Certificate regarding salary, issued by Starline Cars Private Limited	120
50.	Certificate regarding leave, availed by the injured, issued by Starline Cars Private Limited	121
51.	Letter by which petitioner has been relieved from service by Starline Cars Private Limited	122
52.	Copy of PAN Card of injured	74
53.	Copy of School Leaving Certificate of the petitioner Hiteshbhai	75
54.	Copy of Mark-sheet of Diploma Mechanical Engineering	76
55.	Copy of Degree Certificate of Diploma Mechanical Engineer	77

[11] In support of their case the opponent No.3 has produced following documentary evidence :-

Sr. No.	Particulars	Exh. No.
1.	Copy of Certificate of Driving License of the Driver of Truck No.GJ-7-X-4950	148
2.	Copy of Computerized Certificate of Driving License of the Driver of Truck No.GJ-7-X-4950	149
3.	Copy of Certificate of Driving License of the Driver of Truck No.GJ-7-X-4950	150
4.	Copy of Insurance Policy of Truck No.GJ-7-X-4950	152
5.	Copy of abstract of Driving License of the driver of Truck No.GJ-7-X-4950	151

ISSUE NO.1 :-

[12] Claimant No.1 of M.A.C.P.No.627/2010 – Patel Jalpaben Kalpeshkumar has filed an affidavit in the form of deposition, for the claim of compensation vide Exh.43, Claimant No.3 of M.A.C.P.No.628/2010 – Patel Babulal Ramdas has filed an affidavit in the form of deposition, for the claim of compensation vide Exh.47 whereas the claimant of M.A.C.P.No.629/2010 – Patel Hiteshkumar Amrutlal has filed an affidavit in the form of deposition, for the claim of compensation vide Exh.44.

[13] The petitioners have averred about the occurrence of the accident and reiterated about the negligence on the part of the opponent No.1 which had led to the occurrence of

the accident. Learned advocate Mr.S.I.Shah, appearing on behalf of opponent No.3 has submitted that, claimants have created false story about occurrence of accident at the time of filing claim petitions. It is contended by the claimants in their respective claim petitions that, at the place of accident Truck driver came from opposite direction with very high speed and in rash and negligent manner and dashed with the Car of the deceased. In fact on perusal of F.I.R. produced on record at Exh.49 it reveals that, said complaint has been lodged by the relative of the deceased Kalpeshbhai Rambhai Patel against the Truck driver. The driver of the Car No.GJ-2-AP-2024 – Patel Hiteshkumar Amrutlal had also sustained serious injuries in the vehicular accident and he has filed Motor Accident Claim Petition No.629/2010. In support of his claim petition he has submitted his affidavit in form of deposition vide Exh.44, wherein he has in categorically terms stated that, at the place of accident the driver of Truck came from opposite direction, with very high speed and in rash and negligent manner and absolutely on wrong side of the road and dashed with the car, which was driven by him. It is the case of the opponent No.3 – Insurance Company that, at the place of accident road was uneven and in broken condition and therefore, while avoiding ditch on the road car driver came on wrong side and resultantly said accident had taken place. However, during the cross-examination of the car driver he has denied that, at the place of accident he came on wrong side due to ditch on the road. Learned advocate Mr.Shah has further submitted that, on perusal of contents of Panchnama of place of incident – Exh.50, it reveals that, the place of accident is four track road and sufficiently wide and therefore, contributory negligence is required to be considered.

[14] On the other hand learned advocates, appearing on behalf of the claimants have vociferously submitted that, said accident had taken place due to absolute rash and negligent driving on the part of Truck driver. Learned advocates, appearing on behalf of the claimants have further submitted that, it is the duty of the driver of said Truck to take care of the vehicles which were passing on the road but in the present case the Truck driver had not taken due care while driving his Truck on the Highway and thus said accident had taken place due to sole negligence on the part of Truck driver. It is also submitted by learned advocates, appearing on behalf of the claimants that, complaint of said incident has been

lodged against the Truck driver and at the end of investigation, police authority has filed charge-sheet against the driver of Truck and thus said accident had taken place due to absolute negligence on the part of Truck driver. On perusal of the copy of complaint produced vide Exh.49, it reveals the involvement of Truck No.GJ-7-X-4950 and Car No.GJ-2-AP-2024 and occurrence of the accident. On perusal of the spot panchnama produced vide Exh.50, it appears that the accident took place on Balasinor-Kathlal Highway hence, it is quite obvious that drivers of both the vehicles i.e. Car driver (Claimant of M.A.C.P.No.629/2010) and Truck driver were duty bound to take extra care while driving their respective vehicles. It is also pertinent to note that the opponents herein have denied negligence on the part of driver of Truck but have failed to furnish any rebuttal evidence in this regard. The drivers of the vehicles can be said to be the best witness to depose as to how the accident has occurred but on behalf of the opponents, driver of Truck is not examined, therefore the evidence produced by the petitioners remained unchallenged. More importantly, it appears from the copy of charge-sheet produced vide Exh.53 that driver of Truck has been charge-sheeted for causing the accident, which speaks volume about the negligence on his part. Moreover, it is deposed by the claimants that at the place of accident the driver of Truck came with opposite direction with very high speed and absolute on wrong side and dashed with his Car. Therefore, considering the oral as well as documentary evidence on record, it is quite clear that this is a case of contributory negligence on the part of drivers of both the involved vehicles and, hence, it is necessary to ascertain contributory negligence on the part of each of the drivers. It is say of the claimants from the very beginning that the driver of Truck was driving the vehicle very fast in a rash and negligent manner and he could not control over steering and, hence, the Truck dashed with the Car and the accident was caused. It is also evident from the documentary evidence that offence was registered against driver of Truck and he was charge-sheeted by the police. Law is well settled in that regard that the driver of the big and heavy vehicle has to take extra care at the time of plying the vehicle on the road. Considering the incident of accident occurred on the road, it can be safely said that drivers of both the offending vehicles were negligent and responsible but duty and responsibility of the heavy vehicle is on much higher pedestal than the small vehicle hence, this

Tribunal has no hesitation in believing that the accident took place on account of the contributory negligence on the part of Car driver and opponent No.1 and looking to the oral evidence and documentary evidence, in my opinion, the ratio between the two vehicles can be fixed at 80% on the part of opponent No.1, driver of involved Truck and 20% on the part of Car driver and, therefore, I hold that opponent No.1 – **Truck Driver** was negligent to the tune of **80%** and **Car driver** was negligent to the extent of **20%** for the accident in question. Hence, I answer issue No.1 in the affirmative accordingly.

ISSUE NO.2 :-

M.A.C.P.No.627/2010 :-

[15] As per the petitioners, at the time of accident deceased Kalpeshkumar Ramdas Patel was 31 years old. In support of their case to prove the age of the deceased the claimants have produced School Leaving Certificate of the deceased – Patel Kalpeshkumar Ramdas vide Exh.55. On perusal of said document it clearly reveals that, date of birth of deceased Kalpeshkumar is 04.10.1978 whereas said accident had taken place on 13.06.2010. Thus, on the date of accident deceased was 32 years old. No any other evidence on record hence multiplier of 16

years for the age group of 31 to 35 years is adopted considering the age of the deceased as 32 years, for the calculation of compensation amount.

[16] As per the Claim Petition, it is the case of the claimants that, at the time of accident deceased Kalpeshkumar was having degree of B.B.A. and he was doing business as partner of Maheshwari Sales Corporation, Ahmedabad and Mahesana and in the said firms his share was 40% and he was also doing business as partner of Gayatri Plastics, Ahmedabad and in the said firm his share was 50%. It is also the case of the claimants that, deceased was also doing business as partner of P.K.Pipe Dealers and in the said firm also his share was 50% and from his all sources of income he was earning Rs.50,000/- per month. In support of their case the claimants have examined witness – Prafulkumar Dahyabhai Patel, vide Exh.127. This witness was the partner of the deceased and they were doing business in the name of P.K.Pipes. This witness was cross-examined by the learned advocate Mr.S.G.Shah, appearing on behalf of opponent No.3, wherein he has admitted that, said partnership firm was registered with the Income-Tax Department and Sales-Tax Department. He has denied that, he is not able

to produce evidence of registration of said firm with the Income-Tax Department and Sales-Tax Department. The claimants have also examined witness – Patel Jatinkumar Prahladbhai, vide Exh.82. This witness was the partner of the deceased in the firm Gayatri Plastic. He has stated in his deposition that, share of the deceased was 50% in the partnership firm. This witness is cross-examined by the learned advocate Mr.S.G.Shah, appearing on behalf of opponent No.3, wherein he has denied that, said partnership firm was not registered with the Registrar of Firms. He has admitted that, after death of the deceased Kalpeshkumar, he has changed the name of partnership firm. He has also denied that, he has given said deposition with a view to support the case of the deceased, as he was his close relative.

[17] In support of their case the claimants have produced copy of Mark-Sheet of B.B.A. vide Exh.54 and from the said documentary it clearly reveals that, deceased had already completed qualification of B.B.A. Degree. The claimants have produced the copy of Partnership-Deed of the firm – Gayatri Plastics vide Exh.85. On perusal of said documentary evidence it reveals that, Jatinkumar Prahladbhai Patel and deceased Kalpeshkumar Ramdas

Patel were the partners of the said firm and they both have equal share in the said partnership firm i.e. 50% : 50% and said partnership firm was doing the business of manufacturing, purchasing, selling and trading of all types of plastic articles, all types of recycle plastic granules and all types of recycle plastic materials since from 11.11.2009. In support of their case the claimants have produced the copy of Partnership-Deed of the firm – P.K.Pipe Delaers, vide Exh.128. On perusal of the said documentary evidence it reveals that, deceased Patel Kalpeshkumar Ramdas and Patel Prafulkumar Dahyalal were the partners of the said Firm and they both have equal share in the said partnership firm i.e. 50% : 50%. In support of their case the claimants have produced the copy of Partnership-Deed of the firm – Maheshwari Sales Corporation, vide Mark 30/11 but said document has not been exhibited and therefore, it cannot be taken into consideration. From the said documentary evidence produced on record it is clearly established that, deceased was doing the business as partner of the firms – Gayatri Plastic and P.K.Pipe Dealers and in the said firms he has 50% share.

[18] So far as income of the deceased Kalpeshkumar Ramdas Patel is concerned, claimants have produced copy of PAN card at Exh.56 and Permanent Account Number of the deceased was AGRPP8170A. In support of their case the claimants have produced the copies of Income-Tax Return filed by the deceased for his income vide Exh.107 to 110. On perusal of said documentary evidence it reveals that, deceased has filed Income-Tax Return for the Assessment year 2007-2008 for income of Rs.2,39,760/-, for the Assessment year 2008-2009 for income of Rs.3,00,465/-, for the Assessment year 2009-2010 for income of Rs.2,57,110/- and for the Assessment year 2010-2011 for income of Rs.5,70,703/-. On perusal of said documentary evidence it reveals that, the Income-Tax return filed for the Assessment Year 2010-11 was filed on 15.12.2010. Meaning thereby said Income-Tax Return was filed after occurrence of accident and therefore, said income cannot be consideration for computing the amount of compensation. The deceased has just before accident filed Income-Tax Return for the Assessment Year 2009-2010, which was filed on 04.02.2010 i.e. just before the date of accident and said return was filed for the income of Rs.2,57,110/- per annum. For calculating the average income of the

deceased Kalpeshkumar on the basis of Income-Tax Return, filed for the Assessment year 2007-2008 for income of Rs.2,39,760/-, for the Assessment year 2008-2009 for income of Rs.3,00,465/- and for the Assessment year 2009-2010 for income of Rs.2,57,110/-, average annual income of the deceased is to be considered as Rs.2,65,778/- and therefore, said amount can be taken into consideration for the purpose of computation of amount of compensation and hence I consider the same.

[19] At the time of accident, age of the deceased was 32 years and was self employed and therefore, considering the law laid down by the Honourable Supreme Court of India in the case of **NATIONAL INSURANCE CO.LTD. VS. PRANAY SETHI & ORS., reported in 2017(3) G.L.H. 536,** 40% prospective income should be considered and in that manner compensation should be awarded.

[20] Considering the law laid down by the Honourable Supreme Court of India in the above referred case, deceased was 32 years old at the time of accident and hence for the calculation of prospective income of the deceased, 40% amount of his actual income is added and

thus prospective income of the deceased is considered as Rs.3,72,089/- per annum (Rs.2,65,778/- p.a. + 40% amount of Rs.2,65,778/- i.e. Rs.1,06,311/- = Rs.3,72,089/-).

[21] As discussed hereinabove, at the time of accident prospective income of the deceased was Rs.3,72,089/- p.a. Considering the unit of his family, it is just and reasonable to deduct 1/4th amount towards his personal expenses and so principle laid down by the Honourable Supreme Court of India in Sarla Verma's case is adopted in the present case.

[22] As discussed hereinabove, at the time of accident prospective income of the deceased was Rs.3,72,089/- p.a. Considering the said analogy dependency lost would comes to Rs.2,79,067/- p.a. and on applying multiplier of 16 petitioners are entitled for Rs.2,79,067/- x 16 = **Rs.44,65,072/- towards dependency loss.** At the time of accident deceased was 32 years old and therefore, considering the age of the deceased, applicants are entitled for the compensation of **Rs.15,000/- towards loss of estate, Rs.40,000/-**

towards **loss of consortium** and **Rs.15,000/-** towards **funeral ceremony** and herefore, I award the same.

[23] Thus, the applicants are entitled to get an amount of the compensation under the different heads as under :-

Amount Rs.	Details of compensation
44,65,072-00	Dependency loss
15,000-00	Loss of Estate
40,000-00	Loss of Consortium
15,000-00	Funeral ceremony.
45,35,072-00	**Total amount of compensation**

[24] Learned advocate Mr.N.R.Bhavsar, appearing on behalf of opponent No.5 – Insurance Company of Car No.GJ-2-AP-2024 has argued that, certain factual aspect is not disputed by any of the parties, which are as under :-

- At the time of accident Car No.GJ-2-AP-2024 was driven by Friend of the deceased – Kalpeshkumar Ramdas Patel.

- Said Car No.GJ-2-AP-2024 was in the name of deceased Kalpeshkumar Ramdas.

[25] Learned advocate Mr.Bhavsar has further submitted that, at the time of accident said Car was driven by his relative and friend Hiteshkumar Amrutlal Patel and deceased

himself was the occupant of said vehicle and in that event as per the settled propositions of law, as per statutory liability and as per the provisions of Motor Vehicles Act, statutory liability is fastened on the owner to indemnify the amount of compensation to the third party. Here, in this case on hand as per the evidence available on record, the deceased is owner of Car and being owner of the Car, he is not entitled to get amount of compensation from the Insurance company of said vehicle.

[26] Learned advocate Mr.Bhavsar has further submitted that, for the sake of arguments without admitting it if it is to be assumed that, incident of accident is occurred due to negligence on the part of friend of the deceased in that event as per the settled provisions of law, applicants are not entitled to get benefit because deceased himself was the occupant of said vehicle. Learned advocate Mr.Bhavsar has further submitted that, in all way evidence is to be checked and tested in that event the claimants are not entitled to get fruits of terms and conditions of the Insurance Policy. Learned advocate Mr.Bhavsar has read over Section 140, 163-A and 166 of the Motor Vehicles Act and forcefully submitted that, no

way in the said sections liability of other than paid driver is mentioned pertaining to private vehicle is mentioned. For the purpose of covering of the risk of the driver of the private vehicle other than paid driver is not mandatory mentioned in the Motor Vehicles Act. Learned advocate Mr.Bhavsar has put reliance upon the following case laws :-

1.	**FIRST APPEAL NO.1292 OF 2016** ICICI LOMBARD GENERAL INSURANCE COMPANY LTD. v. AMRUTBEN @ AMRATBEN GAGJIBHAI DHAMELIA
2.	**FIRST APPEAL NO.1353 OF 2015** IFFCO TOKIO GENERAL INSURANCE COMPANY LTD. v. DEEPAKBHAI BHIKHABHAI PATEL
3.	**FIRST APPEAL NO.735 OF 2016** UNITED INDIA INSURANCE COMPANY LIMITED v. LEGAL HEIRS OF DECD. BAROT BHARATBHAI ARVINDBHAI
4.	**2005 ACJ PAGE 1 (SC)** DHANRAJ v. THE NEW INDIA ASSURANCE CO. LTD.
5.	**2013 STPL (WEB) 297 SC 1** The New India Assurance Co. Ltd. v. Prabhadevi
6.	**SPECIAL CIVIL APPLICATION NO.15533/2016,** BAJAJ ALLIANCE GENERAL INSURANCE COMPANY LTD. v. JITENDRABHAI THAKARSIBHAI VADHAIYA

[27] Learned advocate Mr.Bhavsar has emphatically put reliance upon the aforesaid case laws and submitted that, considering the above stated settled propositions of law this is fit case in which insurance company is

required to be exonerated. The relevant case laws are reproduced hereunder :-

(1) **FIRST APPEAL NO.735 OF 2016**
UNITED INDIA INSURANCE COMPANY LIMITED v.
LEGAL HEIRS OF DECD. BAROT BHARATBHAI ARVINDBHAI.

wherein it is held by the Honourable Gujarat High Court that,

"16. *Learned Advocate Mr.Panchal has heavily relied upon decision of Rajni Devi (supra) to support impugned judgment of learned Tribunal but facts of case before Hon'ble Apex Court were different then the case on hand. Before Hon'ble Apex Court, it was claim made by owner of vehicle - insured which is not the case on hand. Thus, Page 16 of 19 HC-NIC Page 16 of 19 Created On Thu Mar 30 10:24:10 IST 2017 C/FA/735/2016 JUDGMENT said decision is not at all helpful to claimant rather runs counter to his claim as certain observations which are made in the said judgment support submissions made by learned Advocate Mr.Shelat for the appellant. The Hon'ble Apex Court in a case of Rajni Devi (supra) observed as under.:*

> *"6. It is now a well settled principle of law that in a case where third party is involved, the liability of the insurance company would be unlimited. Where, however, compensation is claimed for the death of the owner or another passenger of the vehicle, the contract of insurance being governed by the contract qua contract, the claim of the insurance company would depend upon the terms thereof."*

17. *It is by now well settled legal position as held in a case of General Assurance Society Ltd. v. Chandumull Jain and Anr., reported in AIR 1966 SC 1644, the Constitution Bench has observed as under :*

> *"11. ......In interpreting documents relating to a contract of insurance, the duty of the court is to interpret the Page 17 of 19 HC-NIC Page 17 of 19 Created On Thu Mar 30 10:24:10 IST 2017 C/FA/735/2016 JUDGMENT words in which the contract is expressed by the parties, because it is not for the court to make a new contract, however reasonable, if the parties have not made it themselves." Again the Hon'ble Apex Court had an occasion to deal with said aspect in a case of Harchand Rai Chandan Lal (supra) wherein it is held as under.: "14. The terms of the contract has to be strictly read and natural meaning be given to it. No outside aid should be sought unless the meaning is ambiguous."*

18. *In this view of the matter, learned Tribunal cannot go beyond terms of contract. Thus, in view of above stated reasons, learned Tribunal has committed a manifest error by awarding Rs.1,00,000/- to claimant being Personal Accident cover to Owner-Driver under policy.*

19. *For the reasons recorded above, the appeal succeeds. The impugned judgment and award dated 31.12.2015 passed by learned Motor Accident Claims Tribunal, (Main), Mehsana in MACP No.838 of 2009 is quashed and set aside. If any amount is deposited by the appellant insurance company either before the registry of this Court or Page 18 of 19 HC-NIC Page 18 of 19 Created On Thu Mar 30 10:24:10 IST 2017*

C/FA/735/2016 JUDGMENT before the learned Tribunal, the same shall be refunded to the insurance company forthwith. Record and Proceedings, if any, be sent back to the lower court forthwith. No order as to costs.

(2) **FIRST APPEAL NO.1353 OF 2015**
IFFCO TOKIYO GENERAL INSURANCE COMPANY LIMITED v. DEEPAKBHAI BHIKHABHAI PATEL.

wherein it is held by the Honourable Gujarat High Court that,

"**8.** Taking into consideration the rival submissions made by learned advocates for both the sides, ratio laid down in the above referred decisions by the Honourable Apex Court in light of the peculiar facts and circumstances of the case, indisputably, the claimant himself stands as registered owner and he himself was driving the offending vehicle as well as he himself has preferred the claim petition against his own insurance company claiming compensation for injuries sustained by him and resultant damages suffered by him. Indisputably, the claimant is not the third party. He is insured and the respondent insurance company is the insurer. Chapter XI of the Act makes the provision for insurance of the motor vehicle against the third party risk and the statute has made it compulsory for securing the risk of the third party and in the case on hand, if the injury or damage is suffered by the third party, then the third party can claim and maintain the claim petition before the Motor Accident Claims Tribunal constituted under the said Chapter.

9. In view of the ratio laid down by the Honourable Apex Court in the above referred decisions, the claim petition preferred by the present respondent original claimant is not maintainable under the provisions of the Act and learned Tribunal has committed manifest error in entertaining the claim petition and making the award, as such.

10. So far as the argument of Mr.Joshi as regards to passing the award to the extent of contractual insured amount of Rs.1,00,000/- is concerned, the said liability arises between the parties by virtue of the contract and in case of breach of contract, party to the contract can avail legal remedy either before the competent civil court or before the consumer forum as may be advised, but surely for breach of such contract, he cannot maintain the claim petition before the learned Tribunal constituted under the Act."

[28] To decide this issue, this court also put reliance upon the following case laws :-

(1) **2009 ACJ 998**
NEW INDIA ASSURANCE CO. LTD. v. SADANAND MUKHI AND OTHERS

wherein it is held by the Honourable Supreme Court of India that,

*"**15.** Contract of insurance of a motor vehicle is governed by the provisions of the Insurance Act. The terms of the policy as also the quantum of the premium payable for insuring the vehicle in question*

depends not only upon the carrying capacity of the vehicle but also on the purpose for which the same was being used and the extent of the risk covered thereby. By taking an 'act policy', the owner of a vehicle fulfils his statutory obligation as contained in Sec. 147 of the Act. The liability of the insurer is either statutory or contractual. If it is contractual its liability extends to the risk covered by the policy of insurance. If additional risks are sought to be covered, additional premium has to be paid. If the contention of the learned counsel is to be accepted, then to a large extent, the provisions of the Insurance Act become otiose. By reason of such an interpretation the insurer would be liable to cover risk of not only a third party but also others who would not otherwise come within the purview thereof. It is one thing to say that the life is uncertain and the same is required to be covered, but it is another thing to say that we must read a statute so as to grant relief to a person not contemplated by the Act. It is not for the court, unless a statute is found to be unconstitutional, to consider the rationality thereof. Even otherwise the provisions of the Act read with the provisions of the Insurance Act appear to be wholly rational.

16. *Only because driving of a motor vehicle may cause accident involving loss of life and property not only of a third party but also the owner of the vehicle and the insured vehicle itself, different provisions have been made in the Insurance Act as also the Act laying down different types of insurance policies. The amount of premium required to be paid for each of the policy is governed by the Insurance Act. A* *statutory regulatory authority fixes the norms and the guidelines.*

17. *Keeping in view the aforementioned Parliamentary object, let us consider the fact of the present case so as to consider as to whether the insurer is liable to pay the amount of compensation in relation to the accident occurred by use of the vehicle which was being driven by the son of the insured ?*

18. *We may, for the said purpose, notice certain decisions covering different categories of the claims.*

In the case of United India Insurance Co. Ltd. V/s. Tilak Singh, 2006 4 SCC 404 this Court considered the provisions of the Motor Vehicles Act, 1939 as also 1988 Act and inter alia opined that the insurance company would have no liability towards the injuries suffered by the deceased who was a pillion rider, as the insurance policy was a statutory policy which did not cover the gratuitous passenger.

In Oriental Insurance Co. Ltd. V/s. Jhuma Saha, 2007 9 SCC 263, it was held :-

> *"10. The deceased was the owner of the vehicle. For the reasons stated in the claim petition or otherwise, he himself was to be blamed for the accident. The accident did not involve motor vehicle other than the one which he was driving. The question which arises for consideration is that the deceased himself being negligent, the claim petition u/s. 166 of the Motor Vehicles Act, 1988 would be maintainable.*

11. Liability of the insurer Company is to the extent of indemnification of the insured against the respondent or an injured person, a third person or in respect of damages of property. Thus, if the insured cannot be fastened with any liability under the provisions of the Motor Vehicles Act, the question of the insurer being liable to indemnify the insured, therefore, does not arise."

It was furthermore held :-

"13. The additional premium was not paid in respect of the entire risk of death or bodily injury of the owner of the vehicle. If that be so, Sec. 147(b) of the Motor Vehicles Act which in no uncertain terms covers a risk of a third party only would be attracted in the present case."

The matter came up for consideration yet again in Oriental Insurance Co. Ltd. V/s. Meena Variyal, 2007 5 SCC 428 wherein it was observed :-

"(10).. As we understand Sec. 147(1) of the Act, an insurance policy there-under need not cover the liability in respect of death or injury arising out of and in the course of the employment of an employee of the person insured by the policy, unless it be a liability arising under the Workmen's Compensation Act, 1923 in respect of a driver, also the conductor, in the case of a public service vehicle, and the one carried in the vehicle as owner of the goods or his representative, if it is a goods vehicle. It is provided that the policy also shall not be required to cover any contractual liability. Uninfluenced by

authorities, we find no difficulty in understanding this provision as one providing that the policy must insure an owner against any liability to a third party caused by or arising out of the use of the vehicle in a public place, and against death or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of vehicle in a public place. The proviso clarifies that the policy shall not be required to cover an employee of the insured in respect of bodily injury or death arising out of and in the course of his employment. Then, an exception is provided to the last foregoing to the effect that the policy must cover a liability arising under the Workmen's Compensation Act, 1923 in respect of the death or bodily injury to an employee who is engaged in driving the vehicle or who serves as a conductor in a public service vehicle or an employee who travels in the vehicle of the employer carrying goods if it is a goods carriage. Section 149(1), which casts an obligation on an insurer to satisfy an award, also speaks only of award in respect of such liability as is required to be covered by a policy under clause (b) of sub- sec. (1) of Sec. 147 (being a liability covered by the terms of the policy). This provision cannot therefore be used to enlarge the liability if it does not exist in terms of Sec. 147 of the Act.

(11) The object of the insistence on insurance under Chapter XI of the Act thus seems to be to compulsorily cover the liability relating to their person or properties of third parties and in respect of employees of the insured employer,

the liability that may arise under the Workmen's Compensation Act, 1923 in respect of the driver, the conductor and the one carried in a goods vehicle carrying goods. On this plain understanding of Sec. 147, we find it difficult to hold that the Insurance Company, in the case on hand, was liable to indemnify the owner, the employer Company, the insured, in respect of the death of one of its employees, who according to the claim, was not the driver. Be it noted that the liability is not one arising under the Workmen's Compensation Act, 1923 and it is doubtful, on the case put forward by the claimant, whether the deceased could be understood as a workman coming within the Workmen's Compensation Act, 1923. Therefore, on a plain reading of Sec. 147 of the Act, it appears to be clear that the Insurance Company is not liable to indemnify the insured in the case on hand."

The said principle was reiterated in United India Insurance Co. Ltd. V/s. Davinder Singh, 2007 8 SCC 698 holding :-

"(10) It is, thus, axiomatic that whereas an insurance company may be held to be liable to indemnify the owner for the purpose of meeting the object and purport of the provisions of the Motor Vehicles Act, the same may not be necessary in a case where an insurance company may refuse to compensate the owner of the vehicle towards his own loss. A distinction must be borne in mind as regards the statutory liability of the insurer vis-a-vis the purport and object sought to be achieved by a beneficent legislation

before a forum constituted under the Motor Vehicles Act and enforcement of a contract qua contract before a Consumer Forum."

(2) **2009 ACJ 2020**
NINGAMMA AND ANOTHER v.
UNITED INDIA INSURANCE CO. LTD.

wherein it is held by the Honourable Supreme Court of India that,

*"**13.** In the light of the aforesaid submissions, the question that falls for our consideration is whether the legal representatives of a person, who was driving a motor vehicle, after borrowing it from the real owner meets with an accident without involving any other vehicle, would be entitled to compensation under Section 163-A of MVA or under any other provision(s) of law and also whether the insurer who issued the insurance policy would be bound to indemnify the deceased or his legal representative? Before dwelling further, it would be useful to discuss the relevant paras of Section 163-A and 166 of the MVA applicable in the present case.*

"163-A. Special provisions as to payment of compensation on structured formula basis.--

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle of the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

xxx xxx xxx

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule."

166. Application for compensation-

(1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of section 165 may be made-

(a) by the person who has sustained the injury;

(b) by the owner of the property; or

(c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or

(d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be:

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal *representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application.*

18. *In the case of Oriental Insurance Company Ltd. V/s. Rajni Devi and Others, (2008) 5 SCC 736, wherein one of us, namely, Hon ble Justice S.B. Sinha is a party, it has been categorically held that in a case where third party is involved, the liability of the insurance company would be unlimited. It was also held in the said decision that where, however, compensation is claimed for the death of the owner or another passenger of the vehicle, the contract of insurance being governed by the contract qua contract, the claim of the claimant against the insurance company would depend upon the terms thereof. It was held in the said decision that Section 163-A of the MVA cannot be said to have any application in respect of an accident wherein the owner of the motor vehicle himself is involved. The decision further held that the question is no longer res integra. The liability under section 163-A of the MVA is on the owner of the vehicle. So a person cannot be both, a claimant as also a recipient, with respect to claim. Therefore, the heirs of the deceased could not have maintained a claim in terms of Section 163-A of the MVA. In our considered opinion, the ratio of the aforesaid decision is clearly applicable to the facts of the present case. In the present case, the deceased was not the owner of the motorbike in question. He borrowed the said motorbike from its real owner. The deceased cannot be held to be employee of the owner of the motorbike although he was authorised to drive the said vehicle by its owner, and therefore, he would step into the shoes of the owner of the motorbike.*

19. *We have already extracted Section 163-A of the MVA hereinbefore. A bare perusal of the said provision would make it explicitly clear that persons like the deceased in the present case would step into the shoes of the owner of the vehicle. In a case wherein the victim died or where he was permanently disabled due to an accident arising out of the aforesaid motor vehicle in that event the liability to make payment of the compensation is on the insurance company or the owner, as the case may be as provided under Section 163-A. But if it is proved that the driver is the owner of the motor vehicle, in that case the owner could not himself be a recipient of compensation as the liability to pay the same is on him. This proposition is absolutely clear on a reading of Section 163-A of the MVA. Accordingly, the legal representatives of the deceased who have stepped into the shoes of the owner of the motor vehicle could not have claimed compensation under Section 163-A of the MVA.*

20. *When we apply the said principle into the facts of the present case we are of the view that the claimants were not entitled to claim compensation under Section 163-A of the MVA and to that extent the High Court was justified in coming to the conclusion that the said provision is not applicable to the facts and circumstances of the present case. However, the question remains as to whether an application for demand of compensation could have been made by the legal representatives of the deceased as provided in Section 166 of the MVA. The said provision specifically provides that an application for compensation arising out of an accident of the nature specified in sub-section (1) of section 165 may be made by the person who has* *sustained the injury; or by the owner of the property; or where death has resulted from the accident, by all or any of the legal representatives of the deceased; or by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be. When an application of the aforesaid nature claiming compensation under the provisions of Section 166 is received, the Tribunal is required to hold an enquiry into the claim and then proceed to make an award which, however, would be subject to the provisions of Section 162, by determining the amount of compensation, which is found to be just. Person or persons who made claim for compensation would thereafter be paid such amount. When such a claim is made by the legal representatives of the deceased, it has to be proved that the deceased was not himself responsible for the accident by his rash and negligent driving. It would also be necessary to prove that the deceased would be covered under the policy so as to make the insurance company liable to make the payment to the heirs. In this context reference could be made to relevant paras of Section 147 of the MVA which reads as follows:-*

147. Requirements of policies and limits of liability-

(1) In order to comply with the requirement of this Chapter, a policy of insurance must be a policy which-

(a) is issued by a person who is an authorised insurer; or

(b) insurer the person or classes of persons specified in the policy to the extent specified in sub-section (2)- (i) against any liability which may be incurred by him in respect of the death of or bodily [injury to any person,

including owner of the goods or his authorised representative carried in the vehicle] or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place:

Provided that a policy shall not be required- (i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923) in respect of his death of, or bodily injury to, any such employee-

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle engaged as conductor of the vehicle or in examining tickets on the vehicle, or

(c) if its is a goods carriage, being carried in the vehicle, or

(ii) to cover any contractual liability.

xxx xxx xxx

(2) Subject to the proviso to sub-section (1), a policy of insurance referred to in sub-section (1), shall cover any liability incurred in respect of any accident, up to the following limits, namely:-

(a) save as provided in clause (b), the amount of liability incurred;

(b) in respect of damage to any property of a third party, a limit of rupees six thousand:

Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier.

xxx xxx xxx

(5) Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons.

(3) **(2008) 5 SUPREME COURT CASES 736 ORIENTAL INSURANCE COMPANY LIMITED v. RAJNI DEVI AND OTHERS.**

wherein it is held by the Honourable Supreme Court of India that,

"7. *It is now a well settled principle of law that in a case where third party is involved, the liability of the insurance company would be unlimited. Where, however, compensation is claimed for the death of the owner or another passenger of the vehicle, the contract of insurance being governed by the contract qua contract, the claim of the insurance company* *would depend upon the terms thereof. The Tribunal, in our opinion, therefore, was not correct in taking the view that while determining the amount of compensation, the only factor which would be relevant would be merely the use of the motor vehicle.*

8. *Section 163-A reads thus :*

163-A. Special provisions as to payment of compensation on structured formula basis-

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle of the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

Explanation.-For the purposes of this sub-section, "permanent disability" shall have the same meaning and extent as in the Workmen's Compensation Act, 1923 (8 of 1923).

(2) In any claim for compensation under sub-sec. (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule."

The said provision cannot be said to have any application in regard to an accident wherein the owner of the motor vehicle himself is involved. The question is no longer res integra.

[29] Learned advocate Mr.Bhavsar has further submitted that, if the Honourable Court may make cursorily glance upon the terms and conditions of the Insurance Policy as well as the contents of insurance policy, nowhere in the policy risk and security of the present claimant is accepted by the insurance company and as per the law laid down by our own Honourable High Court of Gujarat in a case of **UNITED INDIA INSURANCE COMPANY LIMITED v. LEGAL HEIRS OF DEC. BAROT BHARATBHAI ARVINDBHAI in FIRST APPEAL NO.735 OF 2016** AND **IFFCO TOKIO GENERAL INSURANCE COMPANY LTD. v. DEEPAKBHAI BHIKHABHAI PATEL in FIRST APPEAL NO.1353 OF 2015** AND **BAJAJ ALLIANCE GENERAL INSURANCE COMPANY LIMITED v. JITENDRABHAI THAKARSIBHAI VADHAIYA delivered in FIRST APPEAL NO.15533 OF 2016,** claim petition

of present claimants is not maintainable against opponent No.5 hence required to be dismissed.

[30] Taking into consideration the rival submissions made by learned advocates for both the sides, ratio laid down in the above referred decisions by the Honourable Apex Court as well as by the Honourable High Court of Gujarat in light of the peculiar facts and circumstances of the case, indisputably, the deceased was occupant of the vehicle which was of his ownership as well as the claimants have preferred the claim petition against the insurance company of Car claiming compensation for fatal injuries sustained by deceased. Indisputably, the deceased was not the third party. Chapter XI of the Act makes the provision for insurance of the motor vehicle against the third party risk and the statute has made it compulsory for securing the risk of the third party and in the case on hand, if the injury or damage is suffered by the third party, then the third party can claim and maintain the claim petition before the Motor Accident Claims Tribunal constituted under the said Chapter and therefore, I hold that, claim petition filed by the claimants is at all not maintainable against the opponent Nos.4 and 5 is not tenable and therefore, claim petition is liable to

be dismissed against opponent Nos.4 and 5 and therefore, I exonerate the liability of opponent Nos.4 and 5 to pay compensation to the petitioners of M.A.C.P.No.627/2010.

[31] As discussed hereinabove, the claim petition filed by the claimants against the owner and insurance company of the Car is not tenable and therefore, petitioners are entitled only for 80% of the awarded amount i.e. for **Rs.36,28,058/-** (80% amount of Rs.45,35,072/-) and hence I award the same.

M.A.C.P.No.628/2010 :-

[32] As per the petitioners, at the time of accident deceased Anantkumar Babulal Patel was 31 years old. In support of their case to prove the age of the deceased the claimants have produced School Leaving Certificate of the deceased – Patel Anantkumar Babulal vide Exh.60. On perusal of said document it clearly reveals that, date of birth of deceased Anantkumar is 01.06.1979 whereas said accident had taken place on 13.06.2010. Thus, on the date of accident deceased was 31 years old. No any other evidence on record hence multiplier of 16 years for the age group of 31 to 35 years is adopted considering

the age of the deceased as 31 years, for the calculation of compensation amount.

[33] As per the Claim Petition, it is the case of the claimants that, at the time of accident deceased Anantkumar was having degree of Diploma in Computer Science and by way of serving in Maheshwari Sales Corporation, Ahmedabad and Mahesana, he was earning Rs.10,000/- per month. It is the case of the claimants that, during the period from 12.02.2002 to 31.07.2008, deceased had served with the I.T.I., Visnagar, as Group Kaushalya Sahayak (Computer), on the Fix Pay of Rs.5500/- per month. In support of their case they have produced the Identity Card, issued by the I.T.I., Visnagar at Exh.101 and Certificate, regarding his salary is produced on record at Exh.102. In support of their case, the claimants have examined witness – Ajaykumar Ramanlal Panchal, vide Exh.100. This witness has stated on oath that, earlier point of time deceased was serving with I.T.I., Visnagar, on Fix Pay of Rs.5500/-. This witness is cross-examined by the learned advocate Mr.Shah, appearing on behalf of opponent No.3 but nothing contrary is brought on record. As per the case of the claimants at the time of accident deceased was serving in the private firm

– Maheshwari Sales Corporation and was earning Rs.10,000/- per month by way of salary. However, the claimants have not produced any cogent and reliable documentary evidence, on the basis of which it can be safely said that, at the time of accident deceased was earning Rs.10,000/- per month. In absence of any cogent and reliable documentary evidence this Tribunal has to decide the income of the deceased on the basis of guess work and surmises. It is required to be considered that, deceased had served with I.T.I., Visnagar upto 31.07.2008 and when he had left job from I.T.I., Visnagar, his monthly salary was Rs.5500/- per month and then after he had joined services with the Maheshwari Sales Corporation, Ahmedabad and Mahesana. Meaning thereby, it can be presumed that, he might have been offered with more salary than he was earning from I.T.I., Visnagar, and then only he had left his earlier job. At the same time it is also required to be considered that, the claimants have not proved his actual income at the time of accident and therefore, it would be in the interest of justice to decide the monthly income of the deceased as Rs.6000/- per month and hence I consider the same.

[34] At the time of accident, age of the deceased was 31 years and was self employed and therefore, considering the law laid down by the Honourable Supreme Court of India in the case of **NATIONAL INSURANCE CO.LTD. VS. PRANAY SETHI & ORS., reported in 2017(3) G.L.H. 536,** 40% prospective income should be considered and in that manner compensation should be awarded.

[35] Considering the law laid down by the Honourable Supreme Court of India in the above referred case, deceased was 31 years old at the time of accident and hence for the calculation of prospective income of the deceased, 40% amount of his actual income is added and thus prospective income of the deceased is considered as Rs.8,400/- per month (Rs.6,000/- p.m. + 40% amount of Rs.6,000/- i.e. Rs.2,400/- = Rs.8,400/-).

[36] As discussed hereinabove, at the time of accident prospective income of the deceased was Rs.8,400/- p.m. Considering the unit of his family, it is just and reasonable to deduct 1/4th amount towards his personal expenses and so principle laid down by the Honourable

Supreme Court of India in Sarla Verma's case is adopted in the present case.

[37] As discussed hereinabove, at the time of accident prospective income of the deceased was Rs.8,400/- p.m. Considering the said analogy dependency lost would comes to Rs.6,300/- p.m. and on applying multiplier of 16 petitioners are entitled for Rs.6,300/- x 12 x 16 = **Rs.12,09,600/- towards dependency loss.** At the time of accident deceased was 31 years old and therefore, considering the age of the deceased, applicants are entitled for the compensation of **Rs.15,000/- towards loss of estate, Rs.40,000/-** towards **loss of consortium** and **Rs.15,000/-** towards **funeral ceremony** and herefore, I award the same.

[38] Thus, the applicants are entitled to get an amount of the compensation under the different heads as under :-

Amount Rs.	Details of compensation
12,09,600-00	Dependency loss
15,000-00	Loss of Estate
40,000-00	Loss of Consortium
15,000-00	Funeral ceremony.
12,79,600-00	**Total amount of compensation**

[39] So far as the point of liability is concerned, it is an undisputed fact that opponent Nos.1 and 2 were the driver and owner of involved Truck No.GJ-7-X-4950 at the time of accident. It further appears from the record that ownership of the vehicle is not disputed by the opponent No.2. Moreover, certificate of insurance is produced vide Exh.152 which covers the date of accident and, thus, the involved vehicle was insured with opponent No.3. Same way opponent Nos.4 and 5 were the driver and owner of Car No.GJ-02-AP-2024 at the time of accident. It further appears from the records that ownership of the vehicle is not disputed by the opponent No.4. Moreover, certificate of insurance is produced vide Exh.161 which covers the date of accident and, thus, the involved vehicle was insured with opponent No.6 and therefore, all the opponents are jointly and severally liable to pay compensation to the claimants of M.A.C.P.No.628/2010.

M.A.C.P.No.629/2010 :-

[40] For determining the quantum of compensation, it is pertinent to assess the age and income of the petitioner at the time of accident.

[41] So far as age is concerned, as per the petitioner, at the time of accident petitioner was 31 years old. In support of his case to prove the age the claimant has produced School Leaving Certificate vide Exh.75. On perusal of said document it clearly reveals that, date of birth of petitioner Hiteshkumar is 05.10.1978 whereas said accident had taken place on 13.06.2010. Thus, on the date of accident petitioner was 32 years old. No any other evidence on record hence multiplier of 16 years for the age group of 31 to 35 years is adopted considering the age of the petitioner as **32 years**, for the calculation of compensation amount.

[42] So far as income of the petitioner at the time of accident is concerned, the petitioner has submitted in his claim petition that, he is possessing degree of Diploma Mechanical Engineering. It is further submitted that, after his education he has served with Goodluck Motors, Mahesana for the period from 01.04.2001 to 15.03.2006 as Mechanic and Supervisor and then after he had joined services with Starline Cars, Mahesana with effect from 01.04.2006 as Body-Shop In-charge and during his services he was promoted as Workshop Manager w.e.f. 19.12.2009 and was getting salary of Rs.10,000/- per

month. It is further the case of the petitioner that, in the alleged vehicular accident he has sustained serious injuries resultantly he is not in a position to serve anywhere and was compelled to left his job.

[43] In support of his case petitioner has examined witness – Jitendra Rajendra Maurya, on oath, vide Exh.118, who happens to be the Manager of Starline Cars. This witness has stated in his deposition that, petitioner – Hiteshkumar Amrutlal Patel was serving in their company as Works Manager and company way paying him Rs.10,000/- by way of salary and Rs.3,000/- by way of Incentive. This witness has further stated that, company was paying incentive of Rs.9000/- to Rs.10,000/-, during every quarter to petitioner Hiteshbhai and he was eligible for getting incentive regularly. This witness has further stated that, company was issuing Pay Slip regularly, which is produced on record at Exh.199, in which the gross salary of the petitioner is mentioned as Rs.10,000/- per month. He has further stated that, in respect of incentive being paid to petitioner Hiteshbhai, the company has issued Certificate, which is produced on record at Exh.120. This witness has further stated that, due to alleged vehicular accident, petitioner – Hiteshbhai

was remained on leave and certificate to that effect is issued by the company, which is produced on record at Exh.121. It is further stated by this witness that, the leave availed by petitioner – Hiteshbhai was Leave Without Pay. This witness has further stated that, due to injuries sustained to Hiteshbhai, he was not able to continue with the service and therefore, with consent he was relieved from his services and certificate to that effect is produced on record at Exh.122. This witness is cross-examined by the learned advocate Mr.S.G.Shah at length on behalf of opponent No.3. During his cross-examination, this witness has admitted that, while issued certificate regarding payment of incentive he has not verified the books of account of the company. He has also admitted that, he has personally not verified that Hiteshbhai has availed leave without pay or he was paid salary of leave period. Except this nothing contrary is brought on record.

[44] In support of his case, the claimant has also examined witness – Prajapati Yogeshkumar Vitthalbhai, who is the Office Superintendent of Ganpat Vidhyanagar, Kherva, on oath, vide Exh.123. This witness has stated on oath that, Hiteshbhai has joined their institution with effect from

01.02.2001, as Lab Assistant and at that time he was getting fix salary of Rs.4000/-. This witness has further stated that, subsequently his salary was enhanced to the tune of Rs.4500/- and then Rs.6000/- per month. During the course of his deposition, this witness has produced Salary Statement for the period from March-2011 to February-2013, vide Exh.124. This witness is also cross-examined by the learned advocate Mr.S.G.Shah at length on behalf of opponent No.3. During his cross-examination, this witness has admitted that, Salary Statement produced on record at Exh.124 has not been prepared by him. He has also admitted that, at present he cannot say that how much salary he is getting. He has further stated that, he can say about the same after verifying the record of their institution. He has further stated in his cross-examination that, he cannot say that, salary of Hiteshbhai is increased time to time.

[45] From the oral as well as documentary evidence produced on record it reveals that, at the time of accident petitioner was serving as Workshop Manager with Starline Cars Private Limited and his monthly salary was Rs.10,000/- per month. So far as incentive amount is concerned, the petitioner has not proved said income by

way of cogent and reliable documentary evidence. It is not on the record that, during his entire service with Starline Cars Private Limited, how much incentive has been paid by the company at the end of every quarter and therefore, amount of incentive cannot be taken into consideration for the purpose of calculation of income of the petitioner. Thus, on the basis of oral as well as documentary evidence produced on record it can be said the, at the time of accident the petitioner was earning **Rs.10,000/- per month** and hence I consider the same.

[46] It is the submission of the learned advocate Mr.Patel, appearing on behalf of the petitioner that due to serious injury sustained in the vehicular accident, the petitioner has become permanently disabled as he has sustained multiple fracture injuries viz. fracture injury of Rt. side joint of Jaw, fracture injury of Right Hand, multiple fracture injuries on Right Leg, fracture injury of Left Leg and has also sustained serious injuries on lower part of both eyes and stitches were taken and plastic surgery was done on Rt. Eye. He has also sustained puncture injury on small intestine and due to serious injuries on seventh nerve of brain, he is not able to close his eyes and there is no chance of his improvement in the future

even though proper treatment and due care is to be taken regularly.

[47] In support of his case, the claimant has examined witness – Dr.Kamlesh Trikamlal Gurjar, on oath, vide Exh.89. This witness has stated in his deposition about the injuries sustained by the petitioner and also about his disablement. This witness has further stated that, after considering the injuries sustained to the petitioner, he has issued Disability Certificate, which is produced on record at Exh.90, wherein he has considered disability as 38.3% and considering functional disability it is to be considered as body as a whole and it cannot be made half while calculating the amount of compensation. This witness is cross-examined by learned advocate Mr.S.G.Shah, appearing on behalf of opponent No.3. During the course of cross-examination, this witness has admitted that, he has not verified the disability of the petitioner by way of scientific test of the claimant. He has also admitted that, in no book there is principle to consider whole body disablement and functional disability equally. He has also admitted that, in his certificate there is no opinion about functional disablement. He has also

admitted that, in his certificate he has not mentioned the calculation of disability on the basis of Casler's Book.

[48] In support of his case the claimant has also examined witness – Dr.Kiritbhai Dahyabhai Patel, on oath, vide Exh.91. This witness is the Plastic Surgeon and he has stated in his deposition about the disablement of the petitioner and has stated that, he has issued Disability Certificate, which is produced on record at Exh.92. He has further stated that, considering the injuries sustained to the petitioner, the disability of disfigurement has been assessed by him as 18% but by mistake he has mentioned it as 12% in the certificate issued by him. This witness is cross-examined by learned advocate Mr.S.G.Shah, appearing on behalf of opponent No.3. During the course of cross-examination, this witness has admitted that, he cannot be considered as Specialist Mandible Jaw. He has also admitted that, he has not given any treatment to the petitioner. He has further admitted that, if petitioner opt for physiotherapy in that event there is possibility of improvement of difficulties faced by him. He has also admitted that, the said disfigurement can be possible if claimant used to consume tobacco. He has admitted that, due to

disfigurement, daily routine of the claimant may not be affected. I have perused the disability certificate produced herein vide Exh.90 and 92 and it reveals that the petitioner is suffering from difficulties at the time of work. Claimant's over all disability has been assessed as 38.3% by Dr.K.T.Gurjar, Orthopedic Surgeon, Mahesana and 18% by Dr.Kiritbhai Patel, Plastic Surgeon, Mahesana. However, on perusal of the record on hand, especially the oral evidence of the doctors, who has assessed permanent disability, it appears that the disability of body as a whole to the petitioner is to be considered as **28.15%** and hence I consider the same.

[49] At the time of accident petitioner was 32 years old and therefore, in view of **SARLA VERMA v. DELHI TRANSPORT CORPORATION, reported in AIR 2009 SUPREME COURT 3104**, multiplier applicable would be 16 and in view of the same, adopting the multiplier of 16, the **future loss of income** to the petitioner is assessed as **Rs.5,40,480/-** (Rs.10,000/- x 28.15% = Rs.2815/- x 12 x 16 = Rs.5,40,480/-) and hence I award the same.

[50] So far as medical treatment is concerned, it is the case of claimant that, due to serious injuries sustained in the alleged vehicular accident, he was primarily treated at

Referral Hospital, Balasinor and after giving primary treatment he was shifted and admitted in the Apollo Hospital, as an indoor patient for about 16 days and during said period of hospitalization various operations have been performed by various doctors. On perusal of the documents available on record, especially Emergency Admission Certificate of Apollo Hospitals vide Exh.64 and Treatment Certificate produced vide Exh.65, it appears that the claimant took treatment at the Apollo Hospitals, Ahmedabad. Thus, considering the injuries and recovery period, it requires no mentioning that the petitioner would have undergone immense pain and trauma during the period of treatment and recovery and in view of the same, this Tribunal is inclined to grant **Rs.50,000/-** to the petitioner towards **pain, shock and suffering.**

[51] Further considering the factual aspects of the matter and considering the fact that the petitioner is facing mental shock and suffering and during the said period, he would have definitely incurred huge amount towards medicines and treatment and he has produced bills of medical treatment vide Exh.114, 67 to 73 and 162 to 165 for Rs.4,50,936/-. In support of his case, petitioner has examined witness – Amrutbhai Keshabhai Parmar, who is

the employee of Billing Department of Apollo Hospitals, Ahmedabad, on oath, vide Exh.112. This witness has during the course of his chief-examination referred the Bill issued by the Apollo Hospital, Ahmedabad for Rs.4,25,000/-, produced on record at Exh.114. This witness has stated in his deposition that, during the period from 13.06.2010 to 29.06.2010 petitioner was admitted in the said hospital, as an indoor patient. He has also referred the documentary evidence produced on record at Exh.115, 116 and 117, issued by the Apollo Hospitals, Ahmedabad. This witness is cross-examined by the learned advocate Mr.S.G.Shah, appearing on behalf of opponent No.3. During the course of his cross-examination, he has stated that, whatever he has deposed on oath is on the basis of records of Hospitals and he has no personal knowledge about the same.

Moreover, the claimant has submitted that, as at the time of accident he was serving with the Starline Cars Private Limited, said company was deducting Premium from his salary and company was paying said premium amount to Employees' State Insurance Corporation towards Medical Insurance and therefore, out of said amount, Rs.2,58,014/- has been paid by the Employees'

State Insurance Corporation to the claimant by way of Demand Draft and copy of said Demand Draft is produced on record at Exh.137. However, it is the case of the claimant that, though he has received said amount from Employees’ State Insurance Corporation, being third party he is entitled to get said total amount of expenses incurred towards medical treatment. In support of his case, he has cited the case of **NATIONAL INSURANCE CO. LTD. v. AMAN KAPUR AND OTHERS, reported in 2014 ACJ 1342,** and submitted that, in the said case the Honourable Delhi High Court has referred the case of **VIMAL KANWAR v. KISHORE DAN, reported in 2013 ACJ 1441 (SC),** wherein the Honourable Apex Court of India has held that,

> The first issue is "whether Provident Fund, Pension and Insurance receivable by claimants come within the periphery of the Motor Vehicles Act to be termed as "Pecuniary Advantage" liable for deduction."
>
> The aforesaid issue fell for consideration before this Court in ***Helen C. Rebello (Mrs) and others v. Maharashtra State Road Transport Corporation & Anr. reported in (1999) 1 SCC 90***. In the said case, this Court held that Provident Fund, Pension, Insurance and similarly any cash, bank balance, shares, fixed deposits, etc. are all a "pecuniary advantage" receivable by the heirs on account of one s death but all these have no correlation with the amount receivable under a

statute occasioned only on account of accidental death. Such an amount will not come within the periphery of the Motor Vehicles Act to be termed as "pecuniary advantage" liable for deduction. The following was the observation and finding of this Court :

"(37) Broadly, we may examine the receipt of the provident fund which is a deferred payment out of the contribution made by an employee during the tenure of his service. Such employee or his heirs are entitled to receive this amount irrespective of the accidental death. This amount is secured, is certain to be received, while the amount under the Motor Vehicles Act is uncertain and is receivable only on the happening of the event, viz., accident, which may not take place at all. Similarly, family pension is also earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death. The heirs receive family pension even otherwise than the accidental death. No correlation between the two. Similarly, life insurance policy is received either by the insured or the heirs of the insured on account of the contract with the insurer, for which the insured contributes in the form of premium. It is receivable even by the insured if he lives till maturity after paying all the premiums. In the case of death, the insurer indemnifies to pay the sum to the heirs, again in terms of the contract for the premium paid. Again, this amount is receivable by the claimant not on account of any accidental death but otherwise on the insured's death. Death is only a step or contingency in terms of the contract, to receive the amount. Similarly any cash, Bank balance, shares, fixed deposits, etc. though are all a pecuniary advantage receivable by the heirs on account of one's death but all these have no correlation with the amount receivable under a statute occasioned only on account of accidental death. How could such an amount come within the periphery of the Motor Vehicles Act to be termed as "pecuniary advantage" liable for deduction. When we seek the principle of loss and gain, it has to be on a similar and same plane having nexus, inter se, between them and not to which there is no zemblance of any correlation. The insured (deceased) contributes his own money for which he receives the amount which has no correlation to the compensation computed as against the tortfeasor for his negligence on account of the accident. As aforesaid, the amount receivable as compensation under the Act is on account of the injury or death without making any contribution towards it, then how can the fruits of an amount received through contributions of the insured be deducted out of the amount receivable under the Motor Vehicles Act. The amount under this Act he receives without any contribution. As we have said, the compensation payable under the Motor Vehicles Act is statutory while the amount receivable under the life insurance policy is contractual."

As discussed hereinabove, the claimant has received amount of Rs.2,58,014/- from Employees’ State Insurance Corporation towards medical treatment, and therefore, said amount is to be considered as the amount received by the claimant on the basis of contractual liability and therefore, said amount cannot be deducted from the compensation payable under the Motor Vehicles

Act and therefore, claimant is entitled for the total amount of bills, produced on record and in view of the same, this Tribunal is inclined to grant **Rs.4,51,000/-** towards **medical expenses**.

[52] It is the case of the petitioner that, he has sustained serious injuries on face and his face disfigured and still facing disfigurement, discomfort in his life. In support of his case, petitioner has examined witness – Dr.Kiritbhai Patel, vide Exh.91, wherein he has referred Certificate, issued by him, which is produced on record vide Exh.92. Against the aforesaid background, we shall take up for consideration first the question with regard to the adequacy of compensation under the head of "non-pecuniary loss". Two subheads of non-pecuniary loss, viz., `pain and suffering' and `loss of amenities and enjoyment of life' often fall for consideration. Ordinarily, no clear distinction is made between the various components of these two sub-heads. Indeed, the phraseology has become a term of art in the forensic field by its compendious user. It cannot be over-looked, however, that each one of the components of the two sub-heads has its own meaning and content. "Pain" is the immediately felt effect on the nerves and brain on

account of some lesion or injury to a part of the body giving rise to a feeling of distress or agony. It includes, for the purposes of quantification of damages, any pain caused by the medical treatment or surgical operation rendered necessary by the accident injury. "Suffering" is the distress which is not felt as being directly connected with any bodily condition. The term would seem to include fright at the time of the injury or fright reaction, fear of future incapacity, either as to health, sanity or the ability to make a living, and humiliation, sadness and embarrassment caused by disfigurement, if any. "Loss of amenities and enjoyment of life" denotes inconvenience and curtailment of the enjoyment of life not on account of any positive unpleasantness born out of pain and suffering but, in a more negative way, because of the inability to pursue the ordinary activities of life. The loss under this sub-head is not confined merely to interference with leisure activities, that is to say, deprivation of the ability to indulge in enjoyable pursuits. It also takes in impairment in the discharge of the day to day functions of life arising out of injury to one or more of the limbs, internal organs, senses or faculties. In making a global assessment of damages under this composite head, care must be taken to compensate the victim for the varied non-pecuniary losses and burdens, past, present and future, arising out of the accident injury. On perusal of said documentary evidence it reveals that, the Plastic Surgeon has assessed disability as 18% towards disfigurement. In the case of **R.D. Hattangadi v. Pest Control (India) Pvt. Ltd.**, the Honourable Apex Court prescribed the guidelines for the pecuniary and the non-pecuniary losses, which should be considered by the Claims Tribunals while awarding the compensation. According to their Lordships, broadly speaking, while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant for: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far as non-pecuniary damages are concerned, they may include: (i) damages for mental and physical shock, pain and suffering already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters, i.e., on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life; i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life. "Loss of amenities and enjoyment of life" denotes inconvenience and curtailment of the enjoyment of life not on account of any positive unpleasantness born out of pain and suffering but, in a more negative way, because of the inability to pursue the ordinary activities of life. The loss under this sub-head is not confined merely to interference with leisure activities, that is to say, deprivation of the ability to indulge in enjoyable pursuits. It also takes in impairment in the discharge of the day to day functions of life arising out of injury to one or more of the limbs, internal organs, senses or faculties. In making a global assessment of damages under this composite head, care must be taken to compensate the victim for the varied non-pecuniary losses and burdens, past, present and future, arising out of the accident injury. Therefore, considering the oral as well as documentary evidence produced on record it would be just, proper and reasonable to award amount of **Rs.50,000/-** towards **Disfigurement of Face** and hence I award the same.

[53] Further it is a matter of record that during his treatment period and looking to his age above 32 years the petitioner is unable to do anything of his own and he requires constant attendance and assistance of someone for performing his routine functions and, therefore, the petitioner is entitled to **Rs.15,000/-** towards **attendance charges**. Moreover, the petitioner is also entitled to get **Rs.15,000/-** towards **special and nutritious diet**. Further considering the health condition of the petitioner, it is quite evidence that on each and every visit to the hospital, the petitioner would have incurred expenses towards transportation of himself and his companion and, therefore, the petitioner is entitled to **Rs.15,000/-** towards **transportation expenses**.

[54] Further on perusal of the documents available on record, especially injury certificate and disability certificate on record, the petitioner has received disability as certified

by medical expert and, hence, it is quite evident that he would have been unable to work at least for considerable long period. In support of his case the claimant has produced the Certificate, issued by Starline Cars Private Limited, vide Exh.122, wherein it is mentioned that, due to injuries petitioner was remained on leave for the period from 13.06.2010 to 17.10.2010 i.e. about four months and, in view of the same, this Tribunal is inclined to award **Rs.40,000/-** towards **actual loss of income**.

[55] Under the circumstances, the petitioner is entitled to get compensation as per the following particulars :-

Rupees	Details
5,40,480/-	Future loss of income.
50,000/-	Pain, shock and suffering.
4,51,000/-	Medical expenses.
50,000/-	Disfigurement of face
15,000/-	Attendance charges.
15,000/-	Special and nutritious diet.
15,000/-	Transportation expenses.
40,000/-	Actual loss of income.
11,76,480/-	**Total compensation.**

[56] As discussed hereinabove said accident had taken place due to 20% contributory negligence on the part of Car driver i.e. petitioner himself and therefore, petitioner is entitled only for 80% amount of compensation i.e. **Rs.9,41,184/-** (80% amount of Rs.11,76,480/-) and hence I award the same.

[57] So far as the point of liability is concerned, it is an undisputed fact that opponent Nos.1 and 2 were the driver and owner of involved Truck No.GJ-7-X-4950 at the time of accident. It further appears from the record that ownership of the vehicle is not disputed by the opponent No.2. Moreover, certificate of insurance is produced vide Exh.152 which covers the date of accident and, thus, the involved vehicle was insured with opponent No.3 and therefore, opponent Nos.1 to 3 are jointly and severally liable to pay compensation to the claimants of M.A.C.P.No.629/2010.

[58] Learned advocate appearing on behalf of opponent No.3 – Shri S.G.Shah has examined witness – Sattarji Chanchalji Thakor, who happens to be the Assistant Inspector, office of the R.T.O., Vadodara, on oath, vide Exh.146. This witness has stated in his deposition that, in the Certificate of Driving License of the opponent No.1, produced at Exh.151 there is no endorsement of renewal for the period from 04.03.2008 to 03.03.2011. He has further stated that, he has produced the copy of original record of Driving License of the opponent No.1 vide Exh.148, wherein there is an endorsement regarding

renewal for the period from 04.03.2008 to 03.03.2011 but in the computerized record of said driving license, produced on record at Exh.149 there is no endorsement of renewal of the said driving license for the period from 04.03.2008 to 03.03.2011. He has further stated that, generally in computerized record details of each and every renewal is being mentioned but it is true that in the document produced at Exh.149 there is no endorsement of renewal for the said period. During the course of his cross-examination this witness has admitted that, it is possible that, in the document produced vide Exh.151 due to mistake or oversight endorsement of renewal has not been mentioned. This witness has also admitted that, said license included endorsement of Transport Vehicle, Heavy Goods Vehicle and Heavy Passenger Vehicle. Thus, it clearly reveals that, on the date of accident the opponent No.1 was possession valid and effective driving license.

[59] In the present petition, the petitioners have prayed for interest along with costs of the petition but in view of the latest judgments of the Hon’ble Apex Court, the petitioner would be entitled to get interest at the rate of 9% per annum on the amount of compensation, from the

date of petitions till its realization and as the claim petitions have been partly allowed, the petitioners are entitled to get proportionate costs only.

[60] Under these circumstances, opponent No.1 to 3 are jointly and/or severally liable to pay the amount of compensation to the petitioners of M.A.C.P.No.627/2010 and 629/2010 and opponent Nos.1 to 6 are jointly and/or severally liable to pay the amount of compensation to the petitioner of M.A.C.P.No.628/2010 along with interest and costs and in view of the same, the following order is passed :-

:: ORDER ::

1. The Claim Petition **No.627/2010** is partly allowed to the extent of **Rs.36,28,058/- (Rupees thirty six lakhs twenty eight thousand and fifty eight only)** together with proportionate costs and interest at the rate of 9% per annum from the date of the petition, till its realization.

2. Opponent Nos.1 to 3 do pay jointly and severally the aforesaid awarded amount to the petitioners of M.A.C.P.No.627/2010, along with interest and proportionate costs, within 30 days from the receipt of the judgment and award.

3. The liability of opponent Nos.4 and 5 of M.A.C.P.No. 627/2010 is hereby exonerated.

4. On depositing the aforesaid amount in this Tribunal, the amount of interim compensation, if any paid to the petitioners, be deducted.

5. The Office is directed to deduct requisite court-fees before the petitioners are permitted to withdraw the amount of compensation, unless the petitioners produces certificate in terms of court-fee relaxation.

6. The compensation awarded in M.A.C.P.No.627/2010 shall be apportioned equally between the claimants.

7. Out of respective share of the amount of compensation, 30% amount shall be paid by way of A/c. payee cheque to the petitioner Nos.1, 4 and 5 and remaining 70% amount shall be invested in fixed deposit in the name of respective claimant Nos.1, 4 and 5 for a period of five years with any Nationalized Bank of the choice of the petitioners **AND** entire amount of the share of the claimant Nos.2 and 3 shall be invested in fixed deposit in the name of respective claimant Nos.2 and 3 – through their Guardian and Mother – Claimant No.1 for the period of five years or till the minors attain majority, whichever is later.

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8. The Claim Petition **No.628/2010** is partly allowed to the extent of **Rs.12,79,600/- (Rupees twelve lakhs seventy nine thousand and six hundred only)** together with proportionate costs and interest at the rate

of 9% per annum from the date of the petition, till its realization.

9. Contributory negligence is held to be 80% and 20% on the part of Truck No.GJ-7-X-4950 and Car No.GJ-2-AP-2024 respectively.

10. Opponent Nos.1 to 6 do pay jointly and severally the aforesaid awarded amount to the petitioners of M.A.C.P.No.628/2010, along with interest and proportionate costs, within 30 days from the receipt of the judgment and award.

11. On depositing the aforesaid amount in this Tribunal, the amount of interim compensation, if any paid to the petitioners, be deducted.

12. The Office is directed to deduct requisite court-fees before the petitioners are permitted to withdraw the amount of compensation, unless the petitioners produces certificate in terms of court-fee relaxation.

13. The compensation awarded in M.A.C.P.No.628/2010 shall be apportioned equally between the claimants.

14. Out of respective share of the amount of compensation, 30% amount shall be paid by way of A/c. payee cheque to the petitioner Nos.1, 3 and 4 and remaining 70% amount shall be invested in fixed deposit in the name of respective claimant Nos.1, 3 and 4 for a period of five years with any Nationalized Bank of the choice of the petitioners **AND** entire amount of the share of the

claimant No.2 shall be invested in fixed deposit in the name of claimant No.2 – through his Guardian and Mother – Claimant No.1 for the period of five years or till the minor attains majority, whichever is later.

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15. The Claim Petition **No.629/2010** is partly allowed to the extent of **Rs.9,41,184/- (Rupees nine lakh forty one thousand one hundred and eighty four only)** together with proportionate costs and interest at the rate of 9% per annum from the date of the petition, till its realization.

16. Opponent Nos.1 to 3 do pay jointly and severally the aforesaid awarded amount to the petitioner of M.A.C.P.No.629/2010, along with interest and proportionate costs, within 30 days from the receipt of the judgment and award.

17. On depositing the aforesaid amount in this Tribunal, the amount of interim compensation, if any paid to the petitioner, be deducted.

18. The Office is directed to deduct requisite court-fees before the petitioner is permitted to withdraw the amount of compensation, unless the petitioner produces certificate in terms of court-fee relaxation.

19. Out of the remaining amount of compensation of M.A.C.P.No.629/2010, 30% amount shall be paid in cash to the petitioner and remaining 70% amount shall be invested in fixed deposit for a period of five years with any Nationalized Bank of the choice of the petitioner.

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20. The petitioners of all the claim petitions shall be entitled to withdraw periodical interest on the above said FDRs, which shall accrue from time to time, however the petitioners shall not be entitled to encash the FDR without prior permission of this Tribunal.

21. Necessary intimation be given by letter to the concerned Bank with direction to the Bank not to flow any loan or credits over the above said FDR.

22. Opponents to bear their own costs.

23. Awards be drawn accordingly.

24. Copy of this Judgement be kept in M.A.C.P.No.628/2010 and 629/2010.

Pronounced in the open court today, on this 21st day of April, 2017.

Date : 21.04.2017.

[Divyeshkumar Amrutlal Joshi]
MOTOR ACCIDENT CLAIMS TRIBUNAL
(MAIN), MAHESANA.

Place : Mahesana.

CODE NO.GJ00907