Motor Accident Claim Tribunal (Main), Navsari

MAC PETITION NO. 29 OF 2021 **(Claim of Rs. 12,00,000/-)**		
GJNV010007382021		Presented on : 16.04.2021 Registered on : 16.04.2021 Decided on : **06.08.2026** Duration : Y M D 05 03 21

Exh.81

<u>Petitioners</u>:

(1) Bhagubhai Kanjibhai Halpati,
Age : 49 years, Occupation : Retired,

(2) Bhanuben Bhagubhai Halpati,
Age : 46 years, Occupation : Household Work,
Both are residing at : Bandhiya Fadiya, At Post Mandir,
Taluka : Jalalpore, District : Navsari.

AND

MAC PETITION NO. 30 OF 2021 **(Claim of Rs. 70,00,000/-)**		
GJNV010007392021		Presented on : 16.04.2021 Registered on : 16.04.2021 Decided on : **06.08.2026** Duration : Y M D 05 03 21

Exh.30

<u>Petitioners</u> :

(1) Geetaben Ramubhai Ahir,
Age : 47 years, Occupation : Household Work,

(2) Kinjalben Ramubhai Ahir,
Age : 24 years, Occupation : Household Work,

(3) Dipeshbhai Ramubhai Ahir,
Age : 22 years, Occupation : Study,
All petitioners are residing at : New Ahirwas,
At Post : Mandir, Taluka : Jalalpore, District : Navsari.

VERSUS

Common opponents in both claim petitions:

Driver, Owner & Insurance company of Truck No. RJ.14.GE.6227 :

Driver :

(1) Manojbhai Sonpalsinh Nagar,
Age : 30 years, Occupation : Driving,
Residing at : House No. 99, Kanun Goyan Mohalla,
Taluka : Shikarpur, District : Bulandshehar, U.P.

Owner :

(2) Ishwarsing Udanising,
Age : 55 years, Occupation : Business,
Residing at House No. 5, Mukundpura Road,
Bhankrota, Jaipur, Rajasthan-302026.

Insurance Company :

(3) The Oriental Insurance Company Limited,
Address : Opposite Civil Hospital, Station Road, Navsari.

Driver, Owner and Insurance Company of Eicher Tempo No. TN.70.TC.266/2013 :

Driver :

(4) Jayvant Shankarbhai More,
Age : 59 years, Occupation : Driving,
Residing at Kole, Taluka : Karar, District : Satara.

Owner :

(5) Ashok Leyland Limited,
Address : New Corporate Office No. 1,
Sardar Patel Road, Guindy, Chennai, Tamil Nadu.

Insurance Company :

(6) Iffco Tokio General Insurance Company Limited,
Address : 1st Floor, 21st Century Business Center,
Near World Trade Center, Ring Road, Surat-395002.

(7) Ramubhai Lallubhai Ahir,
Age : 48 years, Occupation : Service,
Residing at : New Ahirwas, At Post : Mandir,
Taluka : Jalalpore, District : Navsari.

Appearance in both the claim petitions :

Ld. Advocate Mr. R.G.Thakore for the petitioners
Ex-parte against the opponent no. 1, 2, 4 & 5
Ld. Advocate Mr. P.R.Joshi for the opponent no. 3
Ld. Advocate Mr. S.K.Desai for opponent no. 6
Ex-parte against the opponent no. 7 of MACP No. 30/2021

- : COMMON JUDGMENT :-

1. **Claim petition no. 29/2021** is preferred under Section-166 of the Motor Vehicle Act, 1988 for getting compensation of Rs. 12,00,000/- and **claim petition no. 30/2021** is preferred under Section-166 of the Motor Vehicle Act, 1988, for getting compensation of Rs. 70,00,000/-.

2. As both the claim petitions were arising out of the same vehicular accident, both the petitions have been consolidated by passing an order below Exh. 30 being dated 04.01.2024 and **MACP No. 29/2021** is treated as main matter.

3. The factual matrix leading to the present proceedings are that, on 25.11.2020, the deceased of **MACP No. 30/2021** Ritesh Ramubhai Ahir was driving the pickup vehicle bearing registration no. GJ.21.W.5279 alongwith deceased of **MACP No. 29/2021** Kishanbhai Bhagubhai Halpati who was seated in the pickup vehicle and they were going to take buffaloes, when they reached near the place of incident, at that time, the opponent no. 1 came by driving truck bearing registration no. RJ.14.GE.6227 in rash and negligent manner, endangering human life and without following traffic rules and dashed behind the pickup of deceased persons and so due to the resultant impact, the said pickup vehicle had dashed with the front going Eicher tempo of which the temporary registration no. TN.70.TC.266/2013 and accident had occurred and deceased of both claim petitions have died on the spot due to accidental injuries. The accident had occurred due to negligence of opponent no. 1 and opponent no. 4 and there was no negligence on the part of deceased persons.

A complaint regarding this accident has been filed at the Chikhli Police Station vide C.R. No. 11822009202564/2020 against the opponent no. 1 i.e. driver of truck no. RJ.14.GE.6227.

At the time of accident, the deceased of **MACP No. 29/2021** was of 21 years old, hale and healthy having no vices and no disability and the deceased was doing labour work at G.I.D.C. and earning Rs. 12,000/- per month. On account of untimely death of the deceased in the vehicular accident, his family has become orphan and distraught. Therefore, this petition is filed for compensation of Rs. 12,00,000/- with interest @ 18% p.a., by the petitioners against the opponents.

At the time of accident, the deceased of **MACP No. 30/2021** was of 27 years old, hale and healthy having no vices and no disability and the deceased was doing business of transportation & breeding and also doing agricultural & animal husbandary work and used to earn Rs. 50,000/- to Rs. 75,000/- per month and the deceased was owner of two tempo and was doing the business of transportation by engaging drivers on monthly salary of Rs. 9,000/- per vehicle. On account of untimely death of the deceased in the vehicular accident, his family has become orphan and distraught. Therefore, this petition is filed for compensation of Rs. 70,00,000/- with interest @ 18% p.a., by the petitioners against the opponents.

4. The opponents are duly served. The notices are duly served upon the opponent no. 1, 2, 4, 5 of MACP No. 29/2021 & 30/2021 and the afore stated opponents as well as opponent no. 7 of MACP No. 30/2021 through publishing notice in daily newspaper but they have failed to appear on the date of appearance and subsequent dates hence, the tribunal has ordered to be proceeded ex-parte against them.

The learned advocate has appeared for the opponent no. 3 – The Oriental Insurance Company Limited and filed written statement vide Exh. 47 in MACP No. 29/2021 and Exh. 50 in MACP No. 30/2021, whereby, he had denied negligence, involvement of alleged vehicle in the accident, age, income of the deceased persons and all the averments of the petitions and has further contended that, the present petitions sufferes from non-joinder of parties and further contended that, the accident had occurred due to negligence of driver of Eicher tempo no. TN.70.TC.266/2013 i.e. opponent no. 4 as the driver of the said tempo had suddenly applied brakes because the front going unknown vehicle had applied brakes and so the opponent no. 4 could not control his vehicle no. TN.70.TC.266/2013 and had dashed with the said unknown vehicle and at that time, the pickup vehicle GJ.21.W.5279 was driven by the deceased in full speed and rash and negligent manner and had dashed from behind with the Eicher tempo no. TN.70.TC.266/2013 and then after, the vehicle insured with them had dashed with pickup vehicle no. GJ.21.@.5279 and there was no negligence on the part of the opponent no. 1 in the accident and hence they are not liable to pay compensation but in the alternative have stated that, if tribunal comes to the conclusion regarding negligence of the opponent no. 1, the contributory negligence should assessed and more on the part of the drivers of both the other vehicles and by raising such other contentions have urged to reject the claim against them.

The learned advocate for the opponent no. 6 Iffco-Tokio General Insurance Company has appeared and filed written statement vide Exh. 52 in MACP No. 29/2021 and Exh. 54 in MACP No. 30/2021, whereby the negligence, involvement of the alleged vehicle in the accident, age, income and injuries sustained in the accident and all the averments of the respective petitions and have admitted that the interest of tempo no. TN.70.TC.266/2013 was covered at the material time under the policy issued by them subject to terms and conditions and the policy issued by them bearing no. MG964447 for the period from 17.11.2020 to 16.11.2021 and further contended that, the driver of Eicher tempo no. TN.70.TC.266/2013 was not holding valid and effective driving license to drive the vehicle and has breached the terms and conditions of the policy and further contended that, the accident had occurred due to negligent driving of the opponent no. 1 and deceased of MACP No. 30/2021 and there was no negligence on the part of the driver of Eicher tempo no. TN.70.TC.266/2013 i.e. opponent no. 4 and by raising various contentions, have urged to reject the present claim against them.

5. The petitioners have produced the following oral as well as documentary evidence:

Sr. No.	**Oral Evidence**	**Exh.**
1.	Affidavit of chief examination of petitioner no. 1 – Bhagubhai Kanjibhai Halpati (filed in **MACP No. 29/2021)**	44
2.	Affidavit of chief examination of petitioner no. 1 – Geetaben Ramubhai Ahir (filed in **MACP No. 30/2021)**	60
3.	Deposition of witness - Devangkumar Sureshbhai Desai of **MACP No. 30/2021**	74

Sr. No.	**Documentary Evidence in MACP No.29/2021**	**Exh.**
1	Copy of FIR	66
2	Copy of panchnama of place of incident	67
3	Copy of inquest panchnama of deceased	68
4	Copy of PM Report of deceased	69
5	Copy of RC Book of truck no. RJ.14.GE.6227	M-43/5
6	Copy of insurance policy of truck no. RJ.14.GE.6227	M-43/6
7	Copy of form of trade certificate of Eicher Tempo No. TN.70.TC.266 /2013 issued by R.T.O., Surat	M-43/8
7	Copy of insurance policy cover letter	M-43/9

	of Eicher Tempo No. TN.70.TC. 266/2013	

Sr. No.	Documentary Evidence in MACP No.30/2021	Exh.
1	Copy of inquest panchnama of deceased	61
2	Copy of PM Report of deceased	62
3	Copy of school leaving certificate of deceased	63
4	Copy of driving license of deceased	64
5	Copy of bank statement of deceased	70
6	Copy of bank statement of father of deceased	71
7	Copy of certificate of deceased regarding animal husbandry work	75

The opponent no. 3 & 6 insurance companies have filed an application u/s. 170 of the M. V. Act, 1988 vide Exh. 56 & 57 and the same had been granted by the Tribunal and the insurance companies have been permitted to defend the petitions on all grounds.

The petitioners of respective claim petitions as well as opponent no. 3 have submitted closing purshis vide Exh. 76 & 77 respectively and declared that their evidences to have been closed.

6. Heard the learned advocate for the petitioners, opponent no. 3 as well as opponent no. 6 at length. Read the R&P and took into consideration the evidences produced on record.

7. The following issues are framed in **MACP No.29/2021** vide Exh. 29 and in **MACP No.30/2021** vide Exh. 29:

ISSUES

1	**Whether the deceased died due to rash and negligent driving on the part of the driver of the offending vehicles as alleged ?**
2	**Whether the applicants are entitled to get compensation ? If yes, what amount and from whom ?**
3	**What order and award ?**

My findings on the above issues of both the claim petitions are as under and the reasons for the same are discussed herein after.

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

REASONS

ISSUE NO. 1 IN BOTH THE PETITIONS:

8. It is required to be noted that as both the said petitions are arising out of same vehicular accident, so, the said petitions are decided by this common judgment.

9. While deciding the point of negligence, it has to be borne in mind that the negligence is required to be proved in claim petition under Section 166 of the Act only on the touchstone of the preponderance of probability and not beyond doubt. Above referred ratio is laid down by Hon'ble Apex Court in the cases of ***i) Bimla Devi v/s H.R.T.C., reported in AIR 2009 SC 2819 and ii) Parmeshwari Devi v/s Amir Chand, reported in 2011 (11) SCC 635.***

10. The issue no. 1 is pertaining to negligence on the part of driver of offending vehicles involved in the incident. Negligence means failure to exercise required degree of vehicle expected of a prudent driver. It is a settled principle of law that the burden to prove negligence on the part of drivers of offending vehicles are on the petitioner who asserts it. The petitioner has to produce reasonable evidence to show that the accident took place due to negligence on the part of drivers of the vehicles involved in the accident. Therefore, burden shifts upon the other side to explain the circumstances under which the accident occurred. In the claim petition for the accident under the Motor Vehicle Act strict proof of negligence is not necessary. Negligence can be established even on the basis of preponderance of probabilities. It is true that sometimes direct evidence to prove the negligence is not available and therefore, principle of ***res ipsa loquiter*** i. e. things speak for themselves is required to be kept in mind at the time of deciding negligence. This settled principle of law has been frequently and exhaustively discussed in various judgments of Hon'ble Superior Courts as well as our Hon'ble High Court, as for instance Hon'ble Apex Court in the case of ***Gujarat State Road Transport Corporation v/s Kamlaben Valjibhai Vora reported in 2001(3) GLR 2528***.

11. In order to prove this claim, the deposition of the petitioners of respective claim petitions are recorded vide Exh. 44 & 60. On perusal of same which are the affidavits as per the provisions of Order-18, Rule-4 of the C.P.C. in lieu of examination-in-chief, there is narration of happening of incident as stated in Exh.1, it has been averred that, on 25.11.2020, the deceased of **MACP No. 30/2021** Ritesh Ramubhai Ahir was driving the pickup vehicle bearing registration no. GJ.21.W.5279 alongwith deceased of **MACP No. 29/2021** Kishanbhai Bhagubhai Halpati who was seated in the pickup vehicle and when they reached near the place of incident, at that time, the opponent no. 1 came by driving truck bearing registration no. RJ.14.GE.6227 in rash and negligent manner, endangering human life and without following traffic rules and dashed behind the pickup of deceased persons and so due to the resultant impact, the said pickup vehicle had dashed with the front going Eicher tempo of which the temporary registration no. TN.70.TC.266/2013 and accident had occurred and deceased of both claim petitions have died on the spot due to accidental injuries. The accident had occurred due to negligence of opponent no. 1 and opponent no. 4 and there was no negligence on the part of deceased persons.

12. Having considered the arguments put forward, it is an undisputed fact that the deceased of MACP No. 29/2021 & 30/2021 died in the vehicular accident and the documentary evidences support the said contention. On perusal averments made by the petitioners vide Exh. 44 & 60, it clearly transpires that, they have pointed towards the negligence of the opponent no.1 i.e. driver of truck bearing registration no. RJ.14.GE.6227 and opponent no. 4 i.e. driver of tempo bearing registration no. TN.70.TC.266/2013. It is pertinent to note that the FIR has been lodged against the driver of truck no. RJ.14.GE.6227 and on going through the averments of the petitions, it has been alleged that, the truck had dashed from behind with the said pickup vehicle driven by the deceased and so resultantly, the vehicle of the deceased had dashed with Eicher tempo no. TN.70.TC.266/2013 but the said averments appears to be contrary to the F.I.R. which is relied by the petitioners themselves and produced on record vide Exh. 66. On perusal of the contents of the FIR at Exh. 66, it has clearly been stated that, on National Highway No. 48, one truck was going ahead, which was followed by an unregistered Eicher Tempo and behind the said Eicher Tempo, pickup vehicle no. GJ.21.W.5279 was being driven, and behind the pickup vehicle, truck no. RJ.14.GE.6227 was driven on the road. It is further stated that, the front going unknown truck had suddenly applied brakes, as a result of which the opponent no. 4 i.e. driver of the unregistered Eicher Tempo dashed behind the said truck and then, the driver of pickup vehicle no. GJ.21.W.5279 which was driven by the deceased had dashed behind the Eicher Tempo and at that time, the opponent no. 1 i.e. driver of truck no. RJ.14.GE.6227 was driving the said truck in rash and negligent manner, endangering human life & at full speed had dashed behind the pickup vehicle and accident had occurred and there was chain like collision. As a result of the accident, driver of pickup vehicle along with other person seated in the same (deceased persons of MACP No. 29 & 30/2021) are died on the spot due to accidental injuries. Further on perusal of panchnama of place of incide vide Exh. 67, there is description of the place of incidence and three vehicles are lying in damaged condition and position of vehicles and parts which have been damaged have also been described.

From the aforesaid evidences on record, it clearly emerges that, the unknown truck going in front had suddenly applied the brakes and so, the opponet no. 4 who was driving the Eicher tempo no. TN.70.TC.266/2013 had dashed from behind with the said truck and the resultant impact was the deceased dashing his pickup vehicle in the said Eicher tempo and so as a result, the opponent no. 1 dashing his truck with the vehicle driven by the deceased. So this clearly shows that, none of the drivers had maintained safe distance between the vehicles and it also appears that they were driving in rash and negligent manner and it is to be noted that the pickup vehicle driven by the deceased had dashed with the front going Eicher tempo and the pickup was dashed from behind also and so the vehicle driven by the deceased was damaged from the front and back portion by the both the vehicles and considering the manner of happeing of accident, it clearly transpires that, drivers of all the vehicles have driving the same rashly and negligently without maintaining proper distance with the other vehicles and so, the brakes could not be applied and the accident had occurred. But considering the panchnama of scene of offence as well as the position in which the vehicles are lying and parts of the vehicles which have been damaged, the opponent no. 1 and 4 are much more negligent than the deceased who was driving the pickup vehicle and it has also to be noted that, the charge-sheet has been filed against the opponent no. 1 as per the say of the opponent no. 6 which is not disputed by the other opponents. As discussed above, this tribunal comes to the conclusion that, the accident had not occurred due to sole negligence of the driver of Truck No. RJ.14.GE6227. The driver of the Eicher Tempo was also negligent in as much as he failed to maintain safe and reasonable distance from the vehicle moving ahead and dashed behind the leading truck immediately after it applied brakes. The deceased driver of Pickup Vehicle No. GJ.21.W.5279 also failed to maintain sufficient distance from the Eicher Tempo and consequently dashed behind the tempo and such conduct shows want of due care and caution expected from a prudent driver while driving on National Highway.

At the same time, the evidence also establishes that the driver of Truck No. RJ.14.GE.6227 failed to keep safe braking distance from the pickup vehicle and had dashed behind the pickup vehicle. Had the said driver maintained reasonable distance and proper control over his vehicle, the accident could have been avoided or substantially reduced. His act, therefore, also materially contributed to the occurrence of the accident.

Considering the manner in which the accident occurred, the deceased pickup driver was also negligent to a limited extent in not maintaining a safe distance from the Eicher Tempo and accordingly, the accident cannot be attributed exclusively to the negligence of the drivers of the

Eicher Tempo No. TN.70.TC.266/2013 and Truck No. RJ.14.GE.6227.

Considering the manner in which the accident had occurred, there appears to be negligence on the parts of the drivers of all the vehicles because the driver of the truck, tempo as well as pickup vehicle had not maintained proper distance from the ahead going vehicle and hence, considering the manner of happening of accident, this is the case of contributory and composite negligence and the drivers are more or less responsible and negligent for the happening of the said accident.

Moreover, the drivers of the vehicles i.e. opponent no. 1 & 4 have not stepped into witness box to explain the circumstances in which the accident occurred or that there was no negligence on their part. Therefore, it can safely be presumed that whatever allegations and averments made by the petitioners against both the drivers are indirectly accepted by the opponents. As per the following judgments, non-examination of driver of vehicle will lead the Tribunal to believe that both the drivers were rash and negligent in driving. ***(1) 1981 ACJ 460 [Ramsumer Habai Yadav v/s State of Maharashtra] (2) 1981 ACJ 428 [Dinanath & Ors. v/s Tarachand and Sons & Ors.].***

So, on the basis of the discussion made above and considering the manner in which the accident had occurred, the circumstances speak for themselves and therefore, the principle of ***res ipsa loquiter*** is equally applicable in the present case.

So, considering the aforesaid oral as well as documentary evidence and the discussion made herein above, this Tribunal holds that the accident occurred due to the negligence on the part of all the drivers and considering the overall circumstances, 20% negligence of the deceased, who was driving Pickup Vehicle No. GJ-21-W-5279 (deceased of MACP No. 30/2021), 40% negligence of opponent no. 1 i.e. the driver of Truck No. RJ.14.GE.6227, and 40% negligence of opponent no. 4, the driver of Eicher Tempo No. TN.70.TC.266/2013.

As far as the deceased of MACP No. 29/2021 is concerned, he was seated in the pickup vehicle and so there is no question of any negligence on his part.

As discussed above, this tribunal comes to the conclusion regarding, **20% negligence on the part of the deceased driver (MACP No.30/2021), 40% to opponent no. 1 and 40% to opponent no. 4.**

Accordingly, this Tribunal records a finding that the accident occurred due to **20% negligence** on the part of the deceased driver of Pickup Vehicle No. GJ.21.W.5279 (deceased of MACP No. 30/2021) and **40% negligence** on the part of opponent no. 1, the driver of Truck No. RJ.14.GE.6227, and **40% negligence** on the part of opponent no. 4, the driver of Eicher Tempo No. TN.70.TC.266/2013 **and therefore, I answer the Issue No. 1, accordingly in the "affirmative".**

ISSUES NO. 2 & 3 IN BOTH CLAIM PETITIONS :

IN MACP No. 29/2021 (FATAL):

13. While discussing the Issue No.1, it is held that the drivers of the truck, tempo & pickup were negligent for happening of the accident and therefore, the petitioners are entitled for compensation. In a fatal case arising out of a vehicular accident, compensation is broadly divided into **pecuniary loss and non-pecuniary loss.**

14. Normally, in a fatal accident case arising out of vehicular accident, the Tribunal is required to award compensation on two heads viz. **(1) Pecuniary loss, and (ii) Non-pecuniary loss.** Pecuniary loss consists of: Loss of income, expenditure incurred for funeral, medicines, treatment charges, if deceased has received treatment after the accident and before the death, transportation charges, etc., and non-pecuniary loss will include Pain, Shock and Suffering, if the deceased has survived for some time after the accident and before his death, loss of estate, loss of expectation of life, loss of consortium, etc.

PECUNIARY LOSS :

15. In the present case, as regards the income of the deceased is concerned, it has been pleaded that, the deceased was doing labour work at G.I.D.C. and used to earn Rs. 12,000/- per month but the petitioners have not produced any documentary evidence to support the said say nor have examined any witness in this regard and so, in the case on hand, there is no proof regarding the alleged work and income of the deceased. So, in the case on hand, there is no proof regarding the income of the deceased.

It is cardinal principle of law that Tribunal cannot expect from poor persons or small business persons or from persons doing small job in private sector to maintain his books of account with respect to his monthly income and expenditure. In the case of ***Govind Yadav v/s National Insurance Com. Ltd., reported in 2012 (1) TAC 1 (SC) = 2012 ACJ 28 (SC)*** it has been held in para no. 17 that when there is no proof of income, income of the deceased or injured petitioner shall be decided by taking into consideration prevalence minimum wages. None of the parties have produced on record the prevalence minimum wages applicable for the year 2020, therefore, this Tribunal is not in a position to assess the monthly income of deceased on the basis of the prevalence minimum wages. However, considering the same along with the fact that accident occurred in the year 2020, along with the age of the deceased, in my view, income of deceased at ***Rs. 10,000/- per month*** can be assessed for computing actual loss and future loss of income.

16. The ratio laid down in the case of ***National Insurance Co. Ltd. Vs. Pranay Sethi and Ors.*** in Special Leave Petition (Civil) delivered on 31.10.2017 by the Hon'ble Supreme Court, is required to be considered and, it has been held that ....

> ***58. The seminal issue is the fixation of future prospects in cases of deceased who is self-employed or on a fixed salary. Sarla Verma (supra) has carved out an exception permitting the claimants to bring***

materials on record to get the benefit of addition of future prospects. It has not, per se, allowed any future prospects in respect of the said category.

59. Having bestowed our anxious consideration, we are disposed to think when we accept the principle of standardization, there is really no rationale not to apply the said principle to the self-employed or a person who is on a fixed salary. To follow the doctrine of actual income at the time of death and not to add any amount with regard to future prospects to the income for the purpose of determination of multiplicand would be unjust. The determination of income while computing compensation has to include future prospects so that the method will come within the ambit and sweep of just compensation as postulated Under Section 168 of the Act. In case of a deceased who had held a permanent job with inbuilt grant of annual increment, there is an acceptable certainty. But to state that the legal representatives of a deceased who was on a fixed salary would not be entitled to the benefit of future prospects for the purpose of computation of compensation would be in apposite. It is because the criterion of distinction between the two in that event would be certainty on the one hand and staticness on the other. One may perceive that the comparative measure is certainty on the one hand and uncertainty on the other but such a perception is fallacious. It is because the price rise does affect a self-employed person; and that apart there is always an incessant effort to enhance one's income for sustenance. The purchasing capacity of a salaried person on permanent job when increases because of grant of increments and pay revision or for some other change in service conditions, there is always a competing attitude in the private sector to enhance the salary to get better efficiency from the employees. Similarly, a person who is self-employed is bound to garner his resources and raise his charges/fees so that he can live with same facilities. To have the perception that he is likely to remain static and his income to remain stagnant is contrary to the fundamental concept of human attitude which always intends to live with dynamism and move and change with the time. Though it may seem appropriate that

there cannot be certainty in addition of future prospects to the existing income unlike in the case of a person having a permanent job, yet the said perception does not really deserve acceptance. We are inclined to think that there can be some degree of difference as regards the percentage that is meant for or applied to in respect of the legal representatives who claim on behalf of the deceased who had a permanent job than a person who is self-employed or on a fixed salary. But not to apply the principle of standardization on the foundation of perceived lack of certainty would tantamount to remaining oblivious to the marrows of ground reality. And, therefore, degree-test is imperative. Unless the degree-test is applied and left to the parties to adduce evidence to establish, it would be unfair and inequitable. The degree-test has to have the inbuilt concept of percentage. Taking into consideration the cumulative factors, namely, passage of time, the changing society, escalation of price, the change in price index, the human attitude to follow a particular pattern of life, etc., an addition of 40% of the established income of the deceased towards future prospects and where the deceased was below 40 years an addition of 25% where the deceased was between the age of 40 to 50 years would be reasonable.

60. The controversy does not end here. The question still remains whether there should be no addition where the age of the deceased is more than 50 years. Sarla Verma thinks it appropriate not to add any amount and the same has been approved in Reshma Kumari. Judicial notice can be taken of the fact that salary does not remain the same. When a person is in a permanent job, there is always an enhancement due to one reason or the other. To lay down as a thumb Rule that there will be no addition after 50 years will be an unacceptable concept. We are disposed to think, there should be an addition of 15% if the deceased is between the age of 50 to 60 years and there should be no addition thereafter. Similarly, in case of self-employed or person on fixed salary, the addition should be 10% between the age of 50 to 60 years. The aforesaid yardstick has been fixed so that there can be con-

sistency in the approach by the tribunals and the courts.

61. In view of the aforesaid analysis, we proceed to record our conclusions:
(i) The two-Judge Bench in Santosh Devi should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in Sarla Verma, a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate Bench.
(ii) As Rajesh has not taken note of the decision in Reshma Kumari, which was delivered at earlier point of time, the decision in Rajesh is not a binding precedent.
(iii) While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.
(iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.
(v) For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paragraphs 30 to 32 of Sarla Verma which we have reproduced herein before.
(vi) The selection of multiplier shall be as indicated in the Table in Sarla Verma read with paragraph 42 of that judgment.
(vii) The age of the deceased should be the basis for applying the multiplier.

> ***(viii) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.***

17. As far as the age of the deceased is concerned, the petitioners have stated that deceased was aged 21 years at the time of accident and in order to substantiate their say, petitioners have produced the copy school leaving certificate vide Mark-80/1, on perusal of which it appears that the date of birth of the deceased is 17.09.1999, whereas the said accident took place on 25.11.2020, therefore the age of the deceased at the time of accident was approximately 21 years 02 months 08 days i.e. 21 years so, the tribunal believes the age of the deceased as **21 years** on the date of accident and so, as per the ratio laid down in afore stated judgment, 40% addition is required to be made in the monthly income of the deceased and considering the ratio laid down in the case of Pranay Sethi (Supra) and further considering the fact that deceased was not having permanent job and hence, accordingly prospective income is required to be added, so, the monthly income of the deceased **Rs. 14,000/- (Rs. 10,000/- x 40%).** Thus, the yearly income of the deceased is **Rs. 1,68,000/- (Rs. 14,000/- x 12).**

18. Now, we have to deduct the living expenses of the deceased, however, as per the judgment of the Hon'ble Supreme Court given in the case of ***Sarla Verma v. Delhi Transport Corpn. (Supra),*** in para 15 it has been specifically stated that ***"where the deceased was bachelor and the***

claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally 50 per cent is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically". Here the deceased was unmarried and hence, 1/2 amount is required to be deducted as personal expenses of the deceased. 1/2 amount of Rs. 1,68,000/- is Rs. 84,000/-, hence, **Rs. 84,000/-** (Rs. 1,68,000/- less Rs. 84,000/-) can be considered as pecuniary loss to the petitioners. In the judgment given in the case of ***Sarla Verma v. Delhi Transport Corpn. (Supra),*** the Hon'ble Supreme Court has restructured the multiplier column of Schedule - II and according to this restructured column of multiplier the person belonging to the age group 21 to 25 years is entitled for a **multiplier of 18**. Here, the deceased was aged about 21 years, and therefore, the petitioners are entitled for a multiplier of 18, and hence, if Rs. 84,000/- is multiplied by 18 then **Rs. 15,12,000/-** which can be considered as prospective loss of income to the petitioners because of death of the deceased.

<u>NON PECUNIARY LOSS:</u>

19. Non-pecuniary loss includes compensation under the head of loss of estate; loss of expectancy of life; pain, shock and suffering; etc.

20. The petitioners have asked the amount towards, loss of consortium; compensation to family; members for loss of love and affection; medical; attendant and transportation charges; funeral charges etc.

21. So far as the quantum of compensation under the conventional head is concerned, considering the ratio laid down in the case of ***National Insurance Co. Ltd. Vs. Pranay Sethi & Co. (supra)*** and the said petition is filed by the father and mother of deceased and hence, considering the afore stated proposition and the latest judgments of the Hon'ble Apex Court, it would be just and proper that an amount of Rs. 48,000/- x 2 = Rs. 96,000/- towards parental consortium to the petitioner no. 1 & 2 being father and mother of the deceased and the petitioners are entitled to Rs. 18,000/- towards loss of estate and Rs. 18,000/- towards funeral expenses.

22. In view of the above referred discussions, petitioners are entitled for following amount as compensation:

Sr. No.	**Different heads**	**Amount(Rs.)**
01.	As prospective loss of income.	15,12,000/-
02.	As loss of Estate, loss of consortium and as funeral expenses.	1,32,000/-
	Total Rs.	**16,44,000/-**

The petitioners have filed present claim petition for getting compensation of Rs. 12,00,000/- while as discussed above they are entitled to get compensation of Rs. 16,44,000/-. In such case, the question arise that whether petitioners can get compensation than what they have actually claimed for ? In this regard, reference is required to be made to the ratio laid down by Hon'ble Apex Court in the case of ***Nagappa v/s Gurudayal reported in 2003 (2) SCC 274,*** wherein it is held in Para No.21 that,

> ***"21. "For the reasons discussed above, in our view, under the MV Act, there is no restriction that the Tribunal/Court cannot award compensation amount exceeding the claimed amount. The function of the Tribunal/Court is to award "just" compensation which is reasonable on the basis of evidence produced on record...."***

From the above referred ratio, it becomes clear that Tribunal can grant higher amount than what has been actually claimed by the petitioners. Having considering the evidence on the point of quantum and in that view of the matter, petitioners are entitled for just compensation of **Rs. 16,44,000/- (Rupees Sixteen Lacs Forty Four Thousand).**

IN MACP No. 30/2021 (FATAL):

23. While discussing the Issue No.1, it is held that the drivers of the truck & tempo as well as the deceased were negligent for happening of the accident and therefore, the petitioners are entitled for compensation. In a fatal case arising out of a vehicular accident, compensation is broadly divided into **pecuniary loss and non-pecuniary loss.**

24. Normally, in a fatal accident case arising out of vehicular accident, the Tribunal is required to award compensation on two heads viz. **(1) Pecuniary loss, and (ii) Non-pecuniary loss.** Pecuniary loss consists of: Loss of income, expenditure incurred for funeral, medicines, treatment charges, if deceased has received treatment after the accident and before the death, transportation charges, etc., and non-pecuniary loss will include Pain, Shock and Suffering, if the deceased has survived for some time after the accident and before his death, loss of estate, loss of expectation of life, loss of consortium, etc.

PECUNIARY LOSS :

25. In the present case, as regards the income of the deceased is concerned, it has been pleaded that, the deceased was doing business of transportation & breeding and also doing agricultural & animal husbandary work and used to earn Rs. 50,000/- to Rs. 75,000/- per month and the deceased owned two tempo and was doing the business of transportation by engaging drivers on monthly salary of Rs. 9,000/- per vehicle. To substantiate the said contention, they have examined a witness Devangkumar Sureshbhai Desai vide Exh. 74 who has issued the certificate Exh. 75 and has stated that he had known the deceased and he was doing the animal husbandary work and in the cross-examination he has admitted that, he has no evidence to show that on what basis the certificate Exh. 75 was issued and that as on today also the family members of the deceased are doing the animal husbandary work. So considering the deposition as well as Exh. 75, it has been stated that the deceased was doing the animal husbandary work but there is no evidence regarding how many cattles he was having and the most important facts is that the said witness he has clearly admitted in the cross-examination that, he does not know after the death of deceased, the cattles have been sold or not and petitioner has also admitted that there is no evidence regarding selling of cattles after the death of deceased and the witness examined vide Exh. 75 on whose deposition, the petitioners are relying has clearly admitted in the cross examination that, as on today also the family members of the deceased are doing animal husbandary work. So there is no evidence regarding the how many cattles the deceased was having, what was the earning from the same and what was the total profit after deducting the expenses. The petitioners have also stated that the deceased was doing the business of animals but except the bare words there is no supportive evidence on record and it has not been stated that, how many cattles were breed, to whom, when and in what amount the said were sold and they could have also examined the witness regarding the same but they have failed to do so and hence, the say of the petitioners regarding the deceased doing animal breeding work is not believable. No doubt, it has been stated by the petitioners that the deceased was doing the business of purchasing and selling cattles but there is no clear evidence regarding the same but it is emerging from the FIR that the deceased had gone to get the cattle and so it is believable that deceased must be doing some animal husbandry work.

It has also been stated by the petitioners that, deceased was doing agricultural work but there is no evidence regarding any agricultural land in the name of the deceased and it has also not been stated that where the said land was situated, in which year what crop was cultivated, from where and what kind of fertilizers etc. were purchased, where and to whom the said crop was sold and after deducting the expenses, what was the profit of the deceased from the same.

It has also been stated by the petitioners that, the deceased owned two tempo and was doing the business of transporation and had also engaged drivers at the monthly salary of Rs. 9,000/- but there is no evidence regarding the deceased being owner of the tempo. The petitioners could have produced the registration certificate of the vehicle to show that the deceased owned two tempo and they could also have examined the so called drivers to bring on record regarding the payment of monthly salary to them by the deceased as well as the deceased doing the transportation work but no such evidences there on record and hence, the say of the petitioners regarding the income of the deceased from transportation is not believable.

The petitioners have produced the bank statement vide Exh. 70 for the period from 17.07.2019 to 25.12.2020 but on perusal of the same, considering the amount which has been deposited, there is no clarification regarding the income of the deceased from animal husbandary work or agricultural work or transortation work and it is also to be noted that as per the say of the petitioners themselves, the deceased was doing the work of purchasing and selling the cattle and so he must have also expended amount towards purchase of cattle and would have sold the same but what profit he derived has not been stated by the petitioners nor any such evidence is there on record. The petitioners have also produced bank statement of the father of the deceased vide Exh. 71 for the period from 01.04.2019 to 25.12.2020 but this statement is of the father of the deceased and hence, it cannot be taken into consideration while assessing the income of the deceased.

So, considering the evidences on record, there is no clear evidence regarding the income of the deceased from either animal husbandary work or agricultural work or from transportation business but from the document Exh. 75 as well as the averments made in the FIR, it appears that, the deceased must be doing some animal husbandary work and though the family members of the deceased are as on today also doing the animal husbandary work and the petitioners have suffered the loss of the income with the deceased would be earning and contributing to his family. So in the case on hand, there is no proof regarding the alleged work and income of the deceased. So, in the case on hand, there is no proof regarding the income of the deceased.

It is cardinal principle of law that Tribunal cannot expect from poor persons or small business persons or from persons doing small job in private sector to maintain his books of account with respect to his monthly income and expenditure. In the case of ***Govind Yadav v/s National Insurance Com. Ltd., reported in 2012 (1) TAC 1 (SC) = 2012 ACJ 28 (SC)*** it has been held in para no. 17 that when there is no proof of income, income of the deceased or injured petitioner shall be decided by taking into consideration prevalence minimum wages. None of the parties have produced on record the prevalence minimum wages applicable for the year 2020, therefore, this Tribunal is not in a position to assess the monthly income of deceased on the basis of the prevalence minimum wages. However, considering the same along with the fact that accident occurred in the year 2020, along with the age of the deceased, in my view, income of deceased at ***Rs. 21,000/- per month*** can be assessed for computing actual loss and future loss of income.

26. The ratio laid down in the case of ***National Insurance Co. Ltd. Vs. Pranay Sethi and Ors.*** in Special Leave Petition (Civil) delivered on 31.10.2017 by the Hon'ble Supreme Court, is required to be considered and, it has been held that ....

> ***58. The seminal issue is the fixation of future prospects in cases of deceased who is self-employed or on a fixed salary. Sarla Verma (supra) has carved out an exception permitting the claimants to bring materials on record to get the benefit of addition of future prospects. It has not, per se, allowed any future prospects in respect of the said category.***
>
> ***59. Having bestowed our anxious consideration, we are disposed to think when we accept the principle of standardization, there is really no rationale not to apply the said principle to the self-employed or a person who is on a fixed salary. To follow the doctrine of actual income at the time of death and not to add any amount with regard to future prospects to the income for the purpose of determination of multiplicand would be unjust. The determination of income while computing compensation has to include future prospects so that the method will come within the ambit and sweep of just compensation as postulated Under Section 168 of the Act. In case of a deceased who had held a permanent job with inbuilt grant of annual increment, there is an acceptable certainty. But to state that the legal representatives of a deceased who was on a fixed salary would not be entitled to the***

benefit of future prospects for the purpose of computation of compensation would be in apposite. It is because the criterion of distinction between the two in that event would be certainty on the one hand and staticness on the other. One may perceive that the comparative measure is certainty on the one hand and uncertainty on the other but such a perception is fallacious. It is because the price rise does affect a self-employed person; and that apart there is always an incessant effort to enhance one's income for sustenance. The purchasing capacity of a salaried person on permanent job when increases because of grant of increments and pay revision or for some other change in service conditions, there is always a competing attitude in the private sector to enhance the salary to get better efficiency from the employees. Similarly, a person who is self-employed is bound to garner his resources and raise his charges/fees so that he can live with same facilities. To have the perception that he is likely to remain static and his income to remain stagnant is contrary to the fundamental concept of human attitude which always intends to live with dynamism and move and change with the time. Though it may seem appropriate that there cannot be certainty in addition of future prospects to the existing income unlike in the case of a person having a permanent job, yet the said perception does not really deserve acceptance. We are inclined to think that there can be some degree of difference as regards the percentage that is meant for or applied to in respect of the legal representatives who claim on behalf of the deceased who had a permanent job than a person who is self-employed or on a fixed salary. But not to apply the principle of standardization on the foundation of perceived lack of certainty would tantamount to remaining oblivious to the marrows of ground reality. And, therefore, degree-test is imperative. Unless the degree-test is applied and left to the parties to adduce evidence to establish, it would be unfair and inequitable. The degree-test has to have the inbuilt concept of percentage. Taking into consideration the cumulative factors, namely, passage of time, the changing society, escalation of price, the change in price index, the human attitude to follow a particular pattern of life, etc., an addition of 40% of the established income of the de-

ceased towards future prospects and where the deceased was below 40 years an addition of 25% where the deceased was between the age of 40 to 50 years would be reasonable.

60. The controversy does not end here. The question still remains whether there should be no addition where the age of the deceased is more than 50 years. Sarla Verma thinks it appropriate not to add any amount and the same has been approved in Reshma Kumari. Judicial notice can be taken of the fact that salary does not remain the same. When a person is in a permanent job, there is always an enhancement due to one reason or the other. To lay down as a thumb Rule that there will be no addition after 50 years will be an unacceptable concept. We are disposed to think, there should be an addition of 15% if the deceased is between the age of 50 to 60 years and there should be no addition thereafter. Similarly, in case of self-employed or person on fixed salary, the addition should be 10% between the age of 50 to 60 years. The aforesaid yardstick has been fixed so that there can be consistency in the approach by the tribunals and the courts.

61. In view of the aforesaid analysis, we proceed to record our conclusions:
(i) The two-Judge Bench in Santosh Devi should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in Sarla Verma, a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate Bench.
(ii) As Rajesh has not taken note of the decision in Reshma Kumari, which was delivered at earlier point of time, the decision in Rajesh is not a binding precedent.
(iii) While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the

> ***deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.***
> ***(iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.***
> ***(v) For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paragraphs 30 to 32 of Sarla Verma which we have reproduced herein before.***
> ***(vi) The selection of multiplier shall be as indicated in the Table in Sarla Verma read with paragraph 42 of that judgment.***
> ***(vii) The age of the deceased should be the basis for applying the multiplier.***
> ***(viii) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.***

27. As far as the age of the deceased is concerned, the petitioners have stated that deceased was aged 27 years at the time of accident and in order to substantiate their say, petitioners have produced the copy of school leaving certificate vide Exh. 63, on perusal of which it appears that the date of birth of the deceased is 24.05.1994, whereas the said accident took place on 25.11.2020, therefore the age of the deceased at the time of accident was approximately 26 years 06 months 01 days i.e. 26 years so, the tribunal believes the age of the deceased as **26 years** on the date of accident and considering the ratio laid down in the case of Pranay Sethi (Supra) and further considering the fact that deceased was not having permanent job and hence, accordingly prospective income is required to be added, so, as per the ratio laid down in afore stated judgment, 40% addition is required to be made in the monthly income of the deceased. So, the monthly income of the deceased **Rs. 29,400/- (Rs. 21,000/- x 40%).** Thus, the yearly income of the deceased is **Rs. 3,52,800/- (Rs. 29,400/- x 12).**

28. Now, we have to deduct the living expenses of the deceased, however, as per the judgment of the Hon'ble Supreme Court given in the case of ***Sarla Verma v. Delhi Transport Corpn. (Supra),*** in para 15 it has been specifically stated that ***"where the deceased was bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally 50 per cent is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically".*** Here the deceased was unmarried and hence, 1/2 amount is required to be deducted as personal expenses of the deceased. 1/2 amount of Rs. 3,52,800/- is Rs. 1,76,400/-, hence, **Rs. 1,76,400/-** (Rs. 3,52,800/- less Rs. 1,76,400/-) can be considered as pecuniary loss to the petitioners. In the judgment given in the case of ***Sarla Verma v. Delhi Transport Corpn. (Supra),*** the

Hon'ble Supreme Court has restructured the multiplier column of Schedule - II and according to this restructured column of multiplier the person belonging to the age group 26 to 30 years is entitled for a **multiplier of 17**. Here, the deceased was aged about 26 years, and therefore, the petitioners are entitled for a multiplier of 17, and hence, if Rs. 1,76,400/- is multiplied by 17 then **Rs. 29,98,800/-** which can be considered as prospective loss of income to the petitioners because of death of the deceased.

NON PECUNIARY LOSS:

29. Non-pecuniary loss includes compensation under the head of loss of estate; loss of expectancy of life; pain, shock and suffering; etc.

30. The petitioners have asked the amount towards, loss of consortium; compensation to family; members for loss of love and affection; medical; attendant and transportation charges; funeral charges etc.

31. So far as the quantum of compensation under the conventional head is concerned, considering the ratio laid down in the case of ***National Insurance Co. Ltd. Vs. Pranay Sethi & Co. (supra)***, the amount is required to be awarded. It is to be noted that the said petition is filed by the mother, father, younger sister and brother of deceased but younger sister & brother are not entitled to consortium as per the above judgment and hence, considering the afore stated proposition and the latest judgments of the Hon'ble Apex Court, it would be just and proper that an amount of Rs. 48,000/- x 2 = Rs. 96,000/- towards parental consortium to the petitioner no. 1 being mother of the deceased and opponent no. 7 of MACP No. 30/2021 being father of the deceased and the petitioners are entitled to Rs. 18,000/- towards loss of estate and Rs. 18,000/- towards funeral expenses.

32. In view of the above referred discussions, petitioners are entitled for following amount as compensation:

Sr. No.	**Different heads**	**Amount(Rs.)**
01.	As prospective loss of income.	29,98,800/-
02.	As loss of Estate, loss of consortium and as funeral expenses.	1,32,000/-
	Total Rs.	**31,30,800/-**
	Less - 20% negligence of deceased	**6,26,160/-**
	Total amount of compensation Rs.	**25,04,640/-**

33. While deciding the issue no. 1, this Tribunal has decided that the drivers of the vehicles were negligent in driving. It is pertinent to note that the opponent no. 2 is shown as the owner of the said truck bearing registration no. RJ.14.GE.6227 which finds support from the copy of the RC Book produced on record vide Mark-43/5 in which the name of the opponent no. 2 appears as an owner and hence, on the date of accident, the opponent no. 2 was the owner of the said truck bearing registration No. RJ.14.GE.6227 and the opponent no. 2 has not raised any dispute regarding he not being the owner of the said truck at the time of the accident. Further perusing the insurance policy produced vide Mark-43/6, the name of the opponent no. 2 is shown in the column of ownership of the said truck and insured with opponent no. 3 and effective date and time is stated to be from 08.09.2020 to 07.09.2021 whereas the present accident had occurred on 25.11.2020 and further, in the column of insured the name of the opponent no. 2 appears and the registration number is also mentioned as RJ.14.GE.6227 and no dispute against the said documents has been raised by the opponent no. 3 and therefore the said insurance policy of the opponent no. 3 was effective, active as well as valid on the date of accident.

Further it is pertinent to note that the opponent no. 5 is shown as the owner of the said Eicher Tempo bearing registration no. TN.70.TC.266/2013 which finds support from the copy of form of trade certificate issued by R.T.O., Surat on record vide Mark-43/8 in which the name of the opponent no. 5 appears as an owner and hence, on the date of accident, the opponent no. 5 was the owner of the said truck bearing registration no. TN.70.TC.266/2013 and the opponent no. 5 has not raised any dispute regarding he not being the owner of the said truck at the time of the accident. Further perusing the insurance policy produced vide Mark-43/9, the name of the opponent no. 5 is shown in the column of ownership of the said Eicher Tempo bearing registration no. TN.70.TC.266/2013 and insured with opponent no. 6 and effective date and time is stated to be from

17.01.2020 to 16.11.2021 whereas the present accident had occurred on 25.11.2020 and further, in the column of insured the name of the opponent no. 5 appears and the registration number is also mentioned as TN.70.TC.266/2013 and no dispute against the said document has been raised by the opponent no. 6 and therefore the said insurance policy of the opponent no. 6 was effective, active as well as valid on the date of accident.

Therefore, as per the discussion made above opponent no. 1 to 3 being driver, owner & insurance company of truck bearing registration no. RJ.14.GE.6227 and the opponent no. 4 to 6 being driver, owner & insurance company of Eicher Tempo bearing registration no. TN.70.TC.266/2013 are liable to pay compensation to the respective petitioners jointly & severally, therefore, I answer the Issue Nos. 2 & 3 in both the claim petitions accordingly.

INTEREST:

34. The petitioners have prayed for interest at the rate of 18% per annum. As regards the said contention is concerned, considering the judgment of the Hon'ble Constitutional Bench of the Hon'ble Apex Court in the case of ***Pranay Sethi (Supra)***, the Hon'ble Apex Court has allowed interest at the rate of 9% per annum. Hence, I hold that the petitioners are entitled for interest at the rate of **9% per annum** from the date of the petition till the realization of the amount. Hence, I pass the following final order:

ORDER

1. The **MACP No. 29/2021** is hereby **allowed** and **MACP No. 30/2021** is hereby **partly allowed** with proportionate costs and interest against the **opponent no. 1 to 6 in both the petitions.**
2. The petitioners of **MACP No. 29/2021** do recover **Rs. 16,44,000/- (Rupees Sixteen Lacs Forty Four Thousand)** from the opponent no. 1 to 6, together with running interest at the rate of **9% p.a.** from the date of petition till realization of the amount along with proportionate costs of the petition. After deductions mentioned below **40-60%** amount be given to the petitioner nos. 1 & 2 respectively.
3. The petitioner of **MACP No. 30/2021** do recover **Rs. 25,04,640/- (Rupees Twenty Five Lacs Four Thousand Six Hundred Forty)** from the opponent no. 1 to 6, together with running interest at the rate of **9% p.a.** from the date of petition till realization of the amount along with proportionate costs of the petition. After deductions mentioned below **40-20-20%** amount be given to the petitioner nos. 1 to 3 respectively and **20%** amount be given to the opponent no. 7 (father of deceased).
4. The opponent no. 1 to 6 are hereby directed to comply with the provisions of Section 194-A of the Income Tax Act and deposit the afore stated amount of award after deducting the amount of interim compensation, if any paid u/s 140 of M. V. Act directly

by RTGS or NEFT to the following bank account of this tribunal within 30 days from the date of this order;

Account Name :-	Motor Accident Claims Tribunal, Navsari.
Bank Name :-	State Bank of India
Account Number :-	40756379884
IFSC :-	SBIN0000439
MICR :-	396002061

The opponent no. 1 to 6 shall instruct their bank to remit the payment with the following information.

MACP No.	
Claims Tribunal Name, Place	
Date of Award	
Compensation Amount	
Income Tax Deducted at Source	
Bank Transaction Reference No. / Unique Transaction Reference (UTR) No.	
Name of Bank	
Name of Insurance Co.	

5. On such deposit being made, the opponent no. 1 to 6 shall submit a letter to the office of the Claims Tribunal, Navsari enclosing a copy of the bank advice in the prescribed format as above.

6. The opponent no. 1 to 6 shall make such deposit, shall also send a copy of the aforesaid payment advice to the Claims Tribunal concerned and serve the copy of the said on the petitioners or her/his advocate as the case may be.

7. In so far as tax deduction at source is concerned, Form 16-A of the IT Act should be provided to the petitioners on whose behalf the deduction has been made so as to enable him to seek refund of the tax deducted if any.

8. Deficit Court Fees Stamp, if any, be recovered from the awarded amount.

9. As far as the petitioners of **MACP No. 29/2021 & 30/2021** are concerned, after above deductions, **70%** be deposited in any nationalized bank situated near the residence of the said respective petitioners for a period of 5 years and the remaining **30%** amount be paid by RTGS or NEFT directly in the bank account of the said respective petitioners after due verification.

10. Opponents shall bear their own cost as well as pay the cost to the petitioners.

11. The copy of this judgment and the award to be drawn shall be uploaded on the site.

12. The copy of this judgement be kept in the cognate matter also.

13. Award be drawn accordingly.

14. Investments, as above, shall be encumbered with following terms and conditions:

- The said amount shall be invested with any of the nationalized Bank of the choice of the petitioners in Fixed Deposit Receipt Account.
- The interest on the above Fixed Deposit Receipt Account as and when it becomes payable monthly, quarterly, half-yearly or an-

nually, as agreed to, shall be paid to the petitioners.

- No facility by way of loan, over-draft or cash credit shall be available on the above investment and the Bank shall not allow any such transaction, encumbering the investment or on the basis of the security of the same.
- The Bank shall not permit the petitioner to withdraw the said amount prior to its maturity or without prior permission of this Tribunal.
- The Bank shall intimate to this Tribunal the particulars of the investment viz., number of Fixed Deposit Receipt, name of holder and the date of maturity immediately after issuance of Fixed Deposit Receipt in this case.
- At the end of the period aforesaid, the Bank shall pay the principal amount to the payee the concerned petitioners.

Pronounced in open Court today on this 06th August, 2026.

Sd/-

Date: 06.08.2026 **(Pratik Jaysukhbhai Tamakuwala)**
Place: Navsari. Chairman, M.A.C.T.(Main),
Navsari.
Code No.GJ00581

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