MACApp./285/2020 on 9 January, 2026

GAHC010306252019

IN THE GAUHATI HIGH COURT
(The High Court of Assam, Nagaland, Mizoram and Arun
PRINCIPAL SEAT

MAC Appeal Nos.285/2020 & 332/2021

I. MAC App. No.285/2020
Shri Gunajit Nath,
S/o Late Jogendra Nath,
Resident of Galiahati, Srikarmar Path,
Metuakuchi, Berpeta,
PS & Dist.-Barpeta, Assam.

-Versus-

1. Shri Hitesh Das,
S/o Late Harmohan Das,
Resident of Vill-Manaspur, Ward No.10,
Barpeta Road, PO & PS-Barpeta Road,
Dist.-Barpeta, Assam, Pin-781315.

2. Shri Biplab Pratim Das,
S/o Hitesh Das,
Resident of Vill-Manaspur, Ward No.10,
Barpeta Road, PO & PS-Barpeta Road,
Dist.-Barpeta, Assam, Pin-781315.

3. Miss Dristirekha Das,
D/o Hitesh Das,
Resident of Vill-Manaspur, Ward No.10,

Barpeta Road, PO & PS-Barpeta Road,
Dist.-Barpeta, Assam, Pin-781315.

4. Smt. Kanan Bala Ojah,
W/o Late Kanak Ch. Ojah,
Resident of Vill-Manaspur, Ward No.10,
Barpeta Road, PO & PS-Barpeta Road,
Dist.-Barpeta, Assam, Pin-781315.

MAC App. 285/2020, 332/2021

5. Abdul Rejjak,
S/o Late Atowar Rahman,
Resident of Vill-Jogirpam, PO-Dabaliapara,
Dist.-Barpeta, Assam, Pin-781316.

[Driver of the Dumber 10 wheeler bearing Chasis No.MAT479182J3N37607, Engine No.81L63749284]

6. The Branch Manager,
HDFC ERGO General Insurance Co. Ltd.,
Mayur Garden, Ground Floor, Opposite Rajib Bhawan,
ABC, G.S. Road, Guwahati-781005.
[Insurer of the Dumber 10 wheeler bearing Chasis No.MAT479182J3N37607, Engine No.81L63749284]

.....Respondents.

For the Appellant : Mr. S. Islam. .....Advocate.

For the Respondents : Mr. M.H. Ahmed,
Mr. R. Ali,
Mr. R. Goswami. .....Advocates.

HDFC ERGO General Insurance Co. Ltd.,

Having its Registered Office & Head Office at Ramon House, H.T. Parekh Marg, 169, Backbay Reclamation, Mumbai-400020 and its Guwahati Branch Office at Adityam Building, 6th Floor, Lachit Nagar, G.S. Road, Guwahati, Assam, Pin-781007.

.....Appellant.

-Versus-

1. Shri Hitesh Das, S/o Late Harmohan Das.

2. Shri Biplab Pratim Das, S/o Hitesh Das.

3. Miss Dristirekha Das, D/o Hitesh Das.

4. Smt. Kanan Bala Ojah, W/o Late Kanan Ch. Ojah.

All are residents of Vill-Manaspur, Ward No.10, Barpeta Road, PO & PS-Barpeta Road, Dist.-Barpeta, Assam, Pin-781315.(CLAIMANTS)

5. Shri Gunajit Nath, S/o Late Jogendra Nath, Resident of Vill-Galiahati, Srikarmar Path, Metuakuchi, Barpeta, PS-Barpeta, Dist.-Barpeta, Assam, Pin-781314.

[Owner of Dumber bearing Chasis No.MAT479182J3N37607, Engine No.81L63749284]

6. Abdul Rejjak S/o Late Atowar Rahman, Resident of Vill-Jogirpam, PS-Barpeta, Dist.-Barpeta, Assam, Pin-781316.

[Driver of the Dumber bearing Chasis No.MAT479182J3N37607, Engine No.81L63749284] .....Respondents.

For the Appellant : Mr. R. Goswami. .....Advocate.

For the Respondents : Mr. M.H. Ahmed,
Mr. R. Ali. .....Advocates.

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

Date of Hearing :- 25.11.2025

Date on which judgment is reserved :- 25.11.2025

Date of pronouncement of judgment :- 09.01.2026

Whether the pronouncement is of the operative part of the judgment? :- N/A

Whether the full judgment has been pronounced? :- Yes

JUDGMENT AND ORDER (CAV)

Heard Mr. S. Islam, learned counsel for the appellant in MAC Appeal No.285/2020 and Mr. M.H. Ahmed, learned counsel for the respondent No. 1- 4 and Mr. R. Goswami, learned counsel for the respondent No. 6. None appears for the respondent No.5.

2. Also heard Mr. R. Goswami, learned counsel for the appellant in MAC Appeal No.332/2021, Mr. M.H. Ahmed, learned counsel for the respondent No. 1- 4 and Mr. S. Islam for the respondent No. 5. None appears for the respondent No. 6.

3. In these appeals, being MAC Appeal No.285/2020, and MAC Appeal No.332/2021, the judgment and award, dated 23.09.2019, passed in MAC Case No.46/2019, by the learned Member, Motor Accident Claims Tribunal (MACT), Barpeta, is being challenged.

4. It is to be noted here that vide impugned judgment and award dated 23.09.2019, passed in MAC Case No.46/2019, the learned Member, Motor Accident Claims Tribunal (MACT), Barpeta (Tribunal hereinafter) had allowed the claim petition filed under Section 166 of the M.V. Act, 1988 by one Hitesh Das and three others, and directed the O.P. No.3- HDFC ERGO General Insurance Co. Ltd. to pay an amount of Rs. 26,80,667/- (Rupees Twenty Six Lakhs Eighty Thousand Six Hundred Sixty Seven) being the just compensation to the claimants along with interest @ 9% per annum with effect from the date of filing of the claim petition until its realization subject to the condition that the O.P. No.3- HDFC ERGO GIC Ltd. shall be at liberty to recover the entire amount paid to the claimants from the O.P. No.1 namely, Sri Gunajit Nath.

5. The parties involved in both these petitions are same. And the engaged counsel are also the same. The questions involved and the subject matter of challenge are also the same. Therefore, as agreed by the learned counsel for both the parties, it is being proposed to dispose of both the appeals, by this common judgment and order.

The Background Facts:-

6. The back grounds facts, leading to filing of the present appeals, are briefly stated as under:-

> "On 30.01.2019, in the morning, at about 11:00 □□ Smti. Gitanjali Das, since deceased, was proceeding towards Barpeta, from Barpeta Road, along with one Jitendra Barman in his Maruti car, bearing registration No. AS-15B- 8686, and when the said car reached Kadamguri one Dumper (10 wheeler) moving in from the opposite direction (from the side of Barpeta), which was driven in a rash and negligent manner dashed against the Maruti car in which the deceased was travelling. Consequently, Gitanjali Das and the driver cum owner of the Maruti car sustained serious injuries on their person and they succumbed to such injuries on the spot.
>
> Thereafter, Shri Hitesh Das and three others had filed one claim petition under Section 166 of the M.V. Act, 1988 against the owner, driver and insurer of the offending Tipper/Dumper (10 wheeler) by arraying them as opposite party Nos. 1, 2 and 3 respectively, seeking compensation to the tune of Rs. 50,00,000/- (Rupees Fifty Lakhs) along with interest thereon.
>
> All the opposite parties have entered appearances and contested the case by filing their respective written statements.
>
> O.P. Nos.1 & 2 {owner and driver of the offending Tipper/Dumper (10 wheeler)} in their joint written statement, had denied their fault in the alleged accident and also denied any kind of liability for payment of compensation to the claimants stating that at the material point of time the offending Tipper/Dumper (10 wheeler) apart from having all valid documents had been duly covered by a valid insurance policy, issued by the O.P. No.3- HDFC ERGO General Insurance Co. Ltd. vide insurance policy No. 2315202652724500000, having validity up to the mid-night of 28.01.2020 and that

the driver (O.P. No.2) of the same also possessed a valid driving licence, being D/L No. AS1519920008084, issued by the DTO, Barpeta having validity up to 04.05.2020, covering the date of accident i.e. 30.01.2019.

The O.P. No. 3 i.e. HDFC ERGO General Insurance Co. Ltd. in its written statement has also denied any kind of liability of payment of compensation to the claimants by taking all the pleas of defence. The O.P. No.3 although stated that its liability would be governed by the provisions of Sections 147 and 149 (2) of the M.V. Act, and that the policy issued by it did not cover the offending vehicle on the day of accident and thereby contested the case with all the defence available to it u/s 169 (2) of the M.V. Act, 1988.

Upon pleadings of the parties, the learned Tribunal had framed following issues:-

(i) Whether the alleged motor vehicular accident had taken place on 30-01-2019 at about 10.50 a.m.at Kadamguri under Howly P.S. in the district of Barpeta, Assam due to rash and negligent manner of driving on the part of the driver of the motor vehicle bearing Chassis No. MAT479182 J3N 37607, Engine No.81L 63749284(Dumper 10 wheeler) and in consequence of that Geetanjali Das had died ?

(ii) Whether the motor vehicle bearing Chassis No. MAT479182 J3N 37607, Engine No.81L 63749284 (Dumper 10 wheeler) was duly insured with the O.P. No.3 i.e. HDFC, ERGO General Insurance Company Ltd. under valid insurance policy at the relevant time of accident?

(iii)Whether the claimant is entitled to get compensation, if so, to what extent and by whom payable?

(iv) To what other relief/reliefs the claimant is entitled to in law and equity?

Thereafter, hearing the arguments advanced by the engaged counsels for both the sides and also considering the materials available on record, the learned Tribunal had decided all the issues in affirmative in favour of the claimants and directed the O.P. No.3- HDFC ERGO General Insurance Co. Ltd. to pay an amount of Rs. 26,80,667/- (Rupees Twenty Six Lakhs Eighty Thousand Six Hundred Sixty Seven) being the just compensation to the claimants along with interest @ 9% per annum with effect from the date of filing of the claim petition until its realization subject to the condition that the O.P. No.3- HDFC ERGO GIC Ltd. shall be at liberty to recover the entire amount paid to the claimants from the O.P. No.1 namely, Sri Gunajit Nath."

7. Then being aggrieved, Shri Gunajit Nath, the owner of the Dumper, has preferred the MAC Appeal No.285/2020, challenging the impugned judgment and award on the following grounds:-

(i) The learned Tribunal had discussed about the insurance policy that the vehicle has the valid insurance policy, but the learned Tribunal had misinterpreted that the

vehicle does not have the road permit, therefore the impugned Judgment dated 23/09/2019, passed by the learned Tribunal thereby directing the insurance company to make payment to the claimants and liberty shall be granted to the insurance company to recover the money from the appellant/owner of the dumper is bad in law.

(ii) The learned Tribunal did not consider the fact that the vehicle was newly purchased vehicle which was purchased on 29/01/2019 and on the very next day while the vehicle was proceeded towards the Garage for fitting the accessories at that time the incident was happened, moreover the vehicle was empty vehicle.

The learned Tribunal did not appreciate the fact that after applying for the permit, the authority concerned issued permit to the new vehicle and it takes time.

(iii) The learned Tribunal misconstrued the fact that the vehicle in question only have insurance policy and the vehicle did not possess the permit. For ascertaining the liability insurance policy is the main document, but without considering the same, the learned Member has passed impugned Judgment dated 23/09/2019.

(iv) The learned Tribunal, by misinterpreting the provisions of law has passed the impugned Judgment and award dated 23/09/2019, thereby directing the insurance company to pay awarded amount and recover it from the appellant/owner of the vehicle.

(v) In the impugned Judgment dated 23/09/2019, the learned Tribunal has not considered the fact that the appellant has valid insurance policy, but without considering the same has passed impugned judgment dated 23/09/2019, therefore the same is liable to be modified to the extent that the awarded amount shall be paid by insurance company and it should not be recovered from the appellant.

(vi) The impugned Judgment is not based on the evidence on record and the findings given by the learned Tribunal are perverse. As such, the impugned judgment is absolutely illegal and without jurisdiction. Hence, the same is liable to be modified to the extent that the appellant is not liable to pay the awarded amount.

(viii) The learned Tribunal has misconceived, misunderstood and misconstrued the relevant provisions of law while giving direction to pay the awarded amount.

8. And being aggrieved by the impugned judgment the opposite party No. 3, i.e. HDFC ERGO General Insurance Co. Ltd. has preferred MAC Appeal No.332/2021 on the following grounds:-

(i) The learned Tribunal ought to have appreciated the fact that in the absence of any reliable evidence to prove the income of the deceased, who was admittedly a housewife, the income ought not to have been presumed to be Rs. 16,638.89/- per month.

(iii) The learned Tribunal ought to have given due weightage to the deposition made by CW1 as per which the deceased was a housewife and as such she can be considered as a non earning person. As such presumption of the income of the deceased as Rs.16,638.89/- per month who was a house wife is extremely on higher side and without any basis.

(iv) The learned Tribunal ought to have appreciated the fact that claimants had failed to prove the income of the deceased in its proper perspective. The claimants did not adduce any convincing evidence to prove the income of the deceased. In absence of any reliable document, to prove the income of the deceased, the learned Tribunal ought not to have considered the income of the deceased as Rs. 16,638.89/- per month on the basis that it happens to be one third of the income of the husband,

(v) The learned Tribunal ought to have considered the fact that award of Rs.30,000/- under the head of filial consortium to the children has no basis after the recent Apex Court Judgment in National Insurance Co.

Ltd vs. Pranay Sethi.

(vi) The learned Tribunal ought to have considered the fact that the award of interest at the rate of 9% is also on higher side as compared to the prevailing trend.

Submissions:-

9. Mr. Islam, learned counsel for the appellant, in MAC Appeal No. 285 of 2020, submits that the ground for challenge of the impugned judgment and award is allowing the Insurance Company to recover the awarded amount from the appellant after payment being made by it. Mr. Islam submits that the vehicle was a new vehicle purchased on the day before the accident and that it is fact that on that day the vehicle had no road permit, but it was taken to the workshop on that day for fitting of some accessories. In support of such contention, Mr. Islam has also produced one certificate, dated 15.02.2019, issued by the In-Charge of Abdul Awal Motors Garage. He also submits that absence of permit is a minor and inconsequential breach not direct cause of accident and therefore, it would not constitute sufficient ground to deny the benefit of coverage of insurance to the appellant as on the relevant date the vehicle has valid insurance policy.

9.1. In support of his submission, Mr. Islam has referred to a decision of Hon'ble Supreme Court in the case of National Insurance Co. Ltd. v. Swaran Singh, reported in (2004) 3 SCC 297.

10. Mr. Goswami, the learned counsel for the appellant in MAC Appeal No. 332 of 2021, submits that the grounds for challenge of impugned judgment and award dated 23/09/2019 are:-

(i) The rate of interest so awarded by the learned Tribunal is in higher side;

(ii) The learned Tribunal has failed to consider that no salary certificate of the deceased was exhibited and proved;

(iii) The pay and recovery principle is not applicable as the offending vehicle concerned was driven without permit;

(iv) The liability is clearly upon the owner of the vehicle.

10.1. Under the aforesaid fact and circumstances, Mr. Goswami has contended to allow the appeal by interfering the impugned judgment and award.

10.2. In support of his submission, Mr. Goswami has referred following decisions:

(i) Amrit Paul Singh vs. TATA AIG General Insurance Co. Ltd., reported in (2018) 7 SCC 558;

(ii) National Insurance Co. Ltd. vs. Challa Upendra Rao, reported in (2004) 8 SCC 517

11. Per Contra, Mr. M.H. Ahmed, learned counsel for the respondent No. 1-4, has supported the impugned judgment and award. According to him the impugned judgment and award suffers from no infirmity or illegality and as such it requires no interference of this Court. Therefore, Mr. Ahmed has contended to uphold the same.

11.1. Mr. Ahmed also submits that the respondent No. 1-4 have filed an affidavit bringing on record the salary drawal statement of the respondent No.1 from 01.03.2018 to 28.02.2019 and also a copy of Form 16 as Annexure-1 and 2. And Mr. Ahmed also submits that in the month of January, 2019 the gross salary of the respondent No.1 was Rs.52,466/ and net salary was 50,058/ and as per Annexure 2 he paid a sum of Rs. 10,281/ as income tax and showing his total salary for the financial year 2018-19 at Rs. 6,19,077/. Mr. Ahmed also submits that as such, the learned Tribunal had not committed any mistake while assessing the monthly income of the deceased at Rs. 16,638.89 per month, which is 1/3rd of Rs.51,000/, the monthly income of the respondent No.1.

12. Having heard the submissions of learned counsel for both the parties, this Court has carefully gone through the memo of appeals and the grounds mentioned therein and also gone through the decisions referred by learned counsel for both the appellants and also gone through the scanned copy of the record.

13. The basic facts in these appeals are not in dispute. The Accident Information Report i.e. Form No. 54 (Ext.1), the certified copies of F.I.R. dated 30.01.2019 (Ext.2), the Post Mortem Report of the deceased Gitanjali Das (Ext.3) including inquest report, extract copy of Howly P.S. GDE No. 896 dated 30.01.2019, sketch map, charge sheet No. 51/19 dated 31.03.2019, seizure lists, reports of M.V.I. etc. goes a long way to establish that the accident had taken place on 30.01.2019, at about 11:00 A.M., at Kadamguri on the Howly - Barpeta PWD Road, under Howly P.S. in the district of

Barpeta, Assam with the involvement of two motor vehicles bearing registration No. AS-15B-8686 (Maruti car) and Dumper (10 wheeler) bearing Chasis No. MAT479182J3N37607 and Engine No. 81L63749284 wherein Gitanjali Das, claimants' wife/ mother/ daughter and the driver cum owner of the Maruti car, namely, Jitendra Barman died on the spot. In connection with the said accident Howly P.S., as Howly P.S. Case No. 48/19, u/s 279/304(A)/427 IPC was registered and after investigation charge sheet has been submitted against the driver of the Dumper. The accident took place due to rash and negligent driving on the part of the driver of the Dumper.

14. The learned Tribunal, while assessing the just compensation, had assessed the income of the deceased Gitanjali Das at Rs.16,638.89/- being 1/3rd of income of her husband whose monthly income was Rs.49,916.67/- as per the ratio of the aforesaid judgment of Hon'ble Supreme Court in the case of Arun Agarwal

-vs.- HDFC ERGO General Insurance Co.; reported in AIR 2010 SC 3426, specially in para 35. Notably, husband of the deceased i.e. claimant No.1 is a Government Servant (Sub Engineer in the PWD Drilling Division, Barpeta) whose monthly salary was Rs. 51,000/- at the relevant time as deposed by him. However, no proof in that regard has been produced, but the learned Tribunal had placed reliance upon the same.

14.1. Thereafter, the learned Tribunal had assessed the just compensation as under:-

Pecuniary damages (Special damages):-

Computation of multiplicand: -

(i) Monthly income of deceased (notional) = 16,638.89/-

(ii) Compensation after multiplier of 13 is applied to the above multiplicand (16,638.89/- X 12 X

13) = 25,95,666.84/- ~ 25,95,667/-

Non pecuniary damages(general damages) :-

(iii) For loss of filial consortium for the husband (claimant No.1) = 40,000/-

(iv) For loss of filial consortium (for son and daughter) [@15,000/- x 2] = 30,000/-

(v) Loss of Estate = Nil.

(vi) Funeral expenses including other incidental expenses= 15,000/-

TOTAL = 26,80,667/-

15. First, let the issue of income of the deceased be decided.

From the evidence brought on record it appears that though the claimants have asserted that the deceased worked as a tailor in Sambhu Ladies Tailoring at Barpeta Road, wherefrom, she used to earn an amount of 15,000/- p.m. and also earned an amount of Rs.5,000/- (approx.) from animal husbandry, at the time of her death, yet no proof in support of such contention was made available. No documentary evidence could be produced before the learned Tribunal. Rather, CW-1, during his cross-examination had admitted that his deceased wife was a homemaker.

16. But, it appears that the learned Tribunal, had assessed the income of the deceased, being 1/3rd of the income of her husband.

Notably, the husband of the deceased, i.e. the claimant No.1 was serving as a Government Servant (Sub Engineer in the PWD Drilling Division, Barpeta) whose monthly salary was Rs. 51,000/- at the relevant time.

17. And taking note of the income of the husband of the deceased, i.e. the claimant No.1, and also the ratio laid down in the case of Arun Agarwal -vs.- HDFC ERGO General Insurance Co.'(SIC), in fact it is Arun Kumar Agrawal v. National Insurance Co. Ltd., reported in (2010) 9 SCC 218:) the learned Tribunal had taken 1/3rd income of the husband of the deceased as her income.

18. Notably, in the case of Arun Kumar Agrawal (supra), Hon'ble Supreme Court has held as under:-

> ,35. In our view, it is highly unfair, unjust and inappropriate to compute the compensation payable to the dependants of a deceased wife/mother, who does not have a regular income, by comparing her services with that of a housekeeper or a servant or an employee, who works for a fixed period. The gratuitous services rendered by the wife/mother to the husband and children cannot be equated with the services of an employee and no evidence or data can possibly be produced for estimating the value of such services. It is virtually impossible to measure in terms of money the loss of personal care and attention suffered by the husband and children on the demise of the housewife. In its wisdom, the legislature had, as early as in 1994, fixed the notional income of a non-earning person at Rs. 15,000 per annum and in case of a spouse, 1/3rd income of the earning/surviving spouse for the purpose of computing the compensation.☐

19. It is also to be noted here that in the case of Rajendra Singh vs. National Insurance Company Ltd., reported in (2020) 7 SCC 256, Hon'ble Supreme Court has held as under:-

> '9. The first deceased was a housewife aged about 30 years. In Lata Wadhwa vs. State of Bihar [Lata Wadhwa v. State of Bihar, (2001) 8 SCC 197], this Court had observed that considering the multifarious services rendered by housewives, even on a modest estimation, the income of a housewife between the age group of 34 to 59 years who were active in life should be assessed at Rs 36,000 p.a. A distinction was also drawn

with regard to elderly ladies in the age group of 62 to 72 who would be more adept in discharge of housewife duties by age and experience, and the value of services rendered by them has been taken at Rs 20,000 p.a.

10. In Arun Kumar Agrawal vs. National Insurance Co. Ltd. [Arun Kumar Agrawal v. National Insurance Co. Ltd., (2010) 9 SCC 218: (2010) 3 SCC (Civ) 664: (2010) 3 SCC (Cri) 1313], the Tribunal assessed the notional income of the housewife at Rs 5000 per month, but without any rationale or reasoning concluded that she was a non-earning member and reduced the same to Rs 2500, which was affirmed [Arun Kumar Agrawal v. National Insurance Co.

Ltd., FAFO No. 2408 of 2003, order dated 30-4- 2004 (All)] by the High Court. Disapproving the same and restoring the assessed income, this Court observed at paras 26 and 27 as follows:

(SCC pp. 237-38) ,26. In India the courts have recognised that the contribution made by the wife to the house is invaluable and cannot be computed in terms of money. The gratuitous services rendered by the wife with true love and affection to the children and her husband and managing the household affairs cannot be equated with the services rendered by others. A wife/mother does not work by the clock. She is in the constant attendance of the family throughout the day and night unless she is employed and is required to attend the employer's work for particular hours. She takes care of all the requirements of the husband and children including cooking of food, washing of clothes, etc. She teaches small children and provides invaluable guidance to them for their future life. A housekeeper or maidservant can do the household work, such as cooking food, washing clothes and utensils, keeping the house clean, etc., but she can never be a substitute for a wife/mother who renders selfless service to her husband and children.

27. It is not possible to quantify any amount in lieu of the services rendered by the wife/mother to the family i.e. the husband and children. However, for the purpose of award of compensation to the dependants, some pecuniary estimate has to be made of the services of the housewife/mother. In that context, the term ,services□is required to be given a broad meaning and must be construed by taking into account the loss of personal care and attention given by the deceased to her children as a mother and to her husband as a wife. They are entitled to adequate compensation in lieu of the loss of gratuitous services rendered by the deceased. The amount payable to the dependants cannot be diminished on the ground that some close relation like a grandmother may volunteer to render some of the services to the family which the deceased was giving earlier.□

11. The notional income of the first deceased is therefore held to be Rs 5000 per month at the time of death. The compensation on that basis with a deduction of 1/4th i.e. Rs 15,000 towards personal expenses with a multiplier of 17 is assessed at Rs 7,65,000. If the deceased had survived, in view of observations in Lata Wadhwa [Lata

Wadhwa v. State of Bihar, (2001)

8 SCC 197], her skills as a matured and skilled housewife in contributing to the welfare and care of the family and in the upbringing of the children would have only been enhanced by time and for which reason we hold that the appellants shall be entitled to future prospects @ 40% in addition to the loss of consortium and future expenses already granted. We therefore assess the total compensation payable to the appellants in the first appeal at Rs 11,96,000.' (emphasis supplied)

20. The proposition so laid down in the case of Rajendra Singh (supra), was endorsed very recently by another Bench of Hon'ble Supreme Court in the case of Sunita & Ors. vs. Vinod Singh & Ors., Civil Appeal No. of 2025 [@ Special Leave Petition (Civil) No. 1114 of 2019 (2025 INSC 366), wherein it has been held as under:-

> ,14. We express our respectful agreement with Rajendra Singh (supra) and, accordingly, assess loss of future prospects at 25%, bearing in mind the dicta in Pranay Sethi (supra). In undertaking the exercise of computation of compensation, we have verily reminded ourselves that the Motor Vehicles Act, 1988 is a beneficial and welfare legislation and it is our duty to award 'just compensation' [refer Ningamma v United India Insurance Company Limited, (2009) 13 SCC 710]□

21. But, it has to be noted here that in order to take 1/3rd income of the husband of the deceased, the husband, who is the claimant No.1, had not adduced any convincing evidence, either documentary or oral. Only during preliminary examination by the learned Tribunal, however, he stated that his monthly income is Rs. 51,000/ and that he is working as Sub-Engineer in the PDW, Drilling Division.

But, under what provision the said preliminary statement was recorded is not discernible from the record of the learned Tribunal.

21.1. However, as stated herein above, the respondent No. 1-4 in MAC Appeal No. 332/2021, have filed an affidavit bringing on record the salary drawal statement of the respondent No.1 from 01.03.2018 to 28.02.2019 and also a copy of Form 16 as Annexure- 1 and 2. Perusal of the Annexure-1 and 2 reveals that in the month of January, 2019 the gross salary of the respondent No.1 was Rs.52,466/ and net salary was Rs. 50,058/ and as per Annexure 2, he paid a sum of Rs. 10,281/ as income tax and showing his total salary for the financial year 2018-19 at Rs. 6,19,077/. Thus, it appears that the learned Tribunal had not committed any mistake while assessing the monthly income of the deceased at Rs. 16,638.89 per month, which is 1/3rd of Rs.51,000/, the monthly income of the respondent No.1. Mr. Ahmed, the learned counsel for the respondent No.1-4 in MAC Appeal No. 332/2021, had rightly pointed this out during his argument, and the same is not controverted by Mr. Goswami and also by Mr. Islam, learned counsel for the appellants in both the appeals.

22. Under the given factual scenario the submission of Mr. Goswami, the learned counsel for the appellant in MAC Appeal No. 332 of 2021 cannot be acceded to.

23. Accordingly, the income of the deceased at the time of accident has to be assessed at Rs. 16,638.89, (rounded off @ Rs.16,640/ per month). Thus, having assessed her monthly income at Rs. 16,640/, per month, now an endeavor will be made to determine just compensation, which the claimants/respondents are entitled to.

24. As per PAN Card, the date of birth of the deceased was 01.01.1974, and on the date of accident, her age was 45 years 29 days. The multiplier to be applicable in the present case is for the age group of 41 - 45 years which is 14 as per the decisions of Sarla Verma (Smt) and Others v. Delhi Transport Corporation and Another, reported in (2009) 6 SCC 121 and Shashikala and Others vs. Gangalakshmamma and Another, reported in (2015) 9 SCC 150.

24.1. Notably, in the case of Shashikala (Supra), Hon'ble Supreme Court has held as under:-

> ,16. Insofar as appropriate multiplier, the date of birth of the deceased as per driving licence was 16-6-1961. On the date of accident i.e. 14-12-2006, the deceased was aged 45 years 5 months and 28 days and the Tribunal has taken the age as 46 years. Since the deceased has completed only 45 years, the High Court has rightly taken the age of the deceased as 45 years and adopted multiplier of 14 which is the appropriate multiplier and the same is maintained. Total loss of dependency is calculated at Rs 16,82,310 (Rs 1,20,165 × 14).□24.2. So in view of the aforementioned decision, this Court is of the view that the applicable multiplier in the instant case would be 14 instead of 13 so applied by the learned Tribunal.
>
> 24.3. Thus, having accepted the income of the deceased at Rs.

16,640/ per month, 25% of the same has to be added as future prospect, as at the time of accident, the deceased was between 40- 50 years, and in view of the decision of Hon'ble Supreme Court in the case of National Insurance Company Limited vs. Pranay Sethi, reported in (2017) 16 SCC 680. After addition of 25% to Rs. 16,640/ per month, the amount would be Rs. 12,500/ (Rs.16,640/+Rs.4160/ =Rs.20,800/).

25. Thereafter, in view of the decision of Hon'ble Supreme Court in the case of Sarla Verma (Supra),¼th of the aforesaid amount has to be deducted as personal expenses since he left behind four dependants at the time of accident. Though the learned Tribunal had rejected the claim of claimant/respondent No.4 (mother of the deceased), yet, the evidence of CW-2, namely, Brajen Ojah testified that his mother used to live equally in the house of her siblings. Therefore, the ground assigned by the learned Tribunal appears to be not justified. After deducting ¼th of the above, the amount would be Rs.15,600/-[Rs.20,800/- Rs.5,200/)= Rs.15,600]. After application of multiplier, the amount would be Rs.26,20,800/ (Rs.15,600/ x 12 x 14 = Rs.26,20,800/).

26. Besides, under the conventional heads, a sum of Rs. 40,000/ each, with 10% increase in every three years has to be awarded under the head - consortium, and a sum of Rs. 15,000/- under head - funeral expenses, and the aforesaid amounts should be enhanced by 10% in every 3 years, and a sum of Rs. 15,000/- under head - loss of estate, and the aforesaid amounts should be enhanced by 10% in

every 3 years in view of the decision of Hon'ble Supreme Court in the case of Pranay Sethi (supra). It is to be noted here that after the accident almost 6 years elapsed. That being so, the aforesaid amounts, have to be enhanced twice.

27. The whole calculation, after application of the principle laid down in the case of Sarla Verma (Supra) and also in the case of Pranay Sethi (Supra), would be as under:-

Sl. No.	Heads	Calculation
I	Monthly income Rs. 16,640/ -	
II	25% of (i) to be added as future prospect=(Rs.16,640/+Rs.4160/) =Rs.20,800/	Rs.20,800/-
III	1/4th of the (ii) deducted as personal expenses of the deceased Rs.20,800/-Rs.5,200/)= Rs.15,600	Rs.15,600
IV	Compensation after multiplier of 14 is applied (Rs.15,600/ x 12 x 14) = Rs.26,20,800	Rs.26,20,800

Sl. No.	Heads	Calculation
V	Loss of Estate Rs.15,000/- which has to be increased by 10% Rs.3000/-= every three years (15,000 x Rs.18,000/- 10/100) = 1500 x 2 = Rs.3,000/-	Rs.15,000/-+

VI Loss of Consortium =Rs.40,000/-, Rs.40,000/-+ which has to be increased by 10% Rs.8,000/-= in each three years 40,000 x 10/100 = 4000 x 2 = 8,000. Rs.48,000/x4 (Rs.40,000 + 8,000 = Rs.48,000/- =Rs.192,000- VII Funeral expenses Rs.15,000/-, Rs.15,000/-+ which has to be increased by 10% Rs.3,000/-= in each three years 15,000 x Rs.18,000/- 10/100 = 1500 x 2 =Rs.3000/-

Total compensation awarded = Rs.28,48,800/

28. Now, moving forward to the last point, i.e. who will pay the aforesaid amount of compensation, it appears from the record that at the relevant time, the vehicle was insured with the appellant

Insurance Company in MAC Appeal No. 332/2021, i.e. HDFC ERGO General Insurance Co. Ltd. vide policy No. 2315202652724500000 (Ext.-A) having validity w.e.f. 18.31 hrs., of 29.01.2019 up to the mid-night of 28.01.2020. And as such, it is the responsibility of the appellant Insurance Company in MAC Appeal No. 332/2021, i.e. HDFC ERGO General Insurance Co. Ltd. to pay the same. And the learned Tribunal had rightly fastened the liability upon it.

28.1. However, Mr. Goswami, the learned counsel for the appellant Insurance Company, has pointed out that the vehicle had no valid permit on the day of accident and since the vehicle was driven without permit, Mr. Goswami submits that the Insurance Company is not liable to indemnify the owner of the vehicle. Under such background Mr. Goswami has contended to allow the appeal filed by the Insurance Company.

28.2. But, Mr. Islam, the learned counsel for the appellant in MAC Appeal No. 285/2020, submits that the vehicle being a new one, was being taken to garage for fitting of accessories and the same is permissible. But, the submission of Mr. Islam left this Court unimpressed in as much as much as in the case of Challa Upendra Rao (supra), Hon'ble Supreme Court has held as under:-

> ,12. The High Court was of the view that since there was no permit, the question of violation of any condition thereof does not arise. The view is clearly fallacious. A person without permit to ply a vehicle cannot be placed on a better pedestal vis a-vis one who has a permit, but has violated any condition thereof. Plying of a vehicle without a permit is an infraction. Therefore, in terms of Section 149(2) defence is available to the insurer on that aspect. The acceptability of the stand is a matter of adjudication. The question of policy being operative had no relevance for the issue regarding liability of the insurer. The High Court was, therefore, not justified in holding the insurer liable.□28.3. Again in the case of Amrit Paul Singh (supra), Hon'ble Supreme Court has held as under:-
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> ,24. In the case at hand, it is clearly demonstrable from the materials brought on record that the vehicle at the time of the accident did not have a permit. The appellants had taken the stand that the vehicle was not involved in the accident. That apart, they had not stated whether the vehicle had temporary permit or any other kind of permit. The exceptions that have been carved out under Section 66 of the Act, needless to emphasise, are to be pleaded and proved. The exceptions cannot be taken aid of in the course of an argument to seek absolution from liability. Use of a vehicle in a public place without a permit is a fundamental statutory infraction. We are disposed to think so in view of the series of exceptions carved out in Section 66. The said situations cannot be equated with absence of licence or a fake licence or a licence for different kind of vehicle, or, for that matter, violation of a condition of carrying more number of passengers. Therefore, the principles laid down in Swaran Singh [National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297 : 2004 SCC (Cri) 733] and Lakhmi Chand [Lakhmi Chand v. Reliance General Insurance, (2016) 3 SCC 100 : (2016) 2 SCC (Civ) 45] in that regard would not be applicable to the case at hand. That apart, the insurer had taken the plea that the vehicle in question had no

permit. It does not require the wisdom of the ‚Tripitaka□ that the existence of a permit of any nature is a matter of documentary evidence. Nothing has been brought on record by the insured to prove that he had a permit of the vehicle. In such a situation, the onus cannot be cast on the insurer. Therefore, the Tribunal as well as the High Court had directed that the insurer was required to pay the compensation amount to the claimants with interest with the stipulation that the insurer shall be entitled to recover the same from the owner and the driver. The said directions are in consonance with the principles stated in Swaran Singh [National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297 : 2004 SCC (Cri) 733] and other cases pertaining to pay and recover principle.□28.4. Further in the case of Swaran Singh (supra), Hon'ble Supreme Court has recorded the summary of finding as under:-

‚110. The summary of our findings to the various issues as raised in these petitions is as follows:

(i) Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third-party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.

(ii) An insurer is entitled to raise a defence in a claim petition filed under Section 163-A or Section 166 of the Motor Vehicles Act, 1988, inter alia, in terms of Section 149(2)(a)(ii) of the said Act.

(iii) The breach of policy condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer.

Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) Insurance companies, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish ‚breach□on the part of the owner of the vehicle; the burden of proof where for would be on them.

(v) The court cannot lay down any criteria as to how the said burden would be discharged, inasmuch as the same would depend upon the facts and circumstances of each case.

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards the insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply ,the rule of main purpose□and the concept of ,fundamental breach□to allow defences available to the insurer under Section 149(2) of the Act.

(vii) The question, as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver (a fake one or otherwise), does not fulfil the requirements of law or not will have to be determined in each case.

(viii) If a vehicle at the time of accident was driven by a person having a learner's licence, the insurance companies would be liable to satisfy the decree.

(ix) The Claims Tribunal constituted under Section 165 read with Section 168 is empowered to adjudicate all claims in respect of the accidents involving death or of bodily injury or damage to property of third party arising in use of motor vehicle. The said power of the Tribunal is not restricted to decide the claims inter se between claimant or claimants on one side and insured, insurer and driver on the other. In the course of adjudicating the claim for compensation and to decide the availability of defence or defences to the insurer, the Tribunal has necessarily the power and jurisdiction to decide disputes inter se between the insurer and the insured. The decision rendered on the claims and disputes inter se between the insurer and insured in the course of adjudication of claim for compensation by the claimants and the award made thereon is enforceable and executable in the same manner as provided in Section 174 of the Act for enforcement and execution of the award in favour of the claimants.

(x) Where on adjudication of the claim under the Act the Tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of Section 149(2) read with sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the Tribunal. Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the Tribunal to the Collector in the same manner under Section 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by sub-section (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the Tribunal.

(xi) The provisions contained in sub-section (4) with the proviso there under and sub-section (5) which are intended to cover specified contingencies mentioned therein to enable the insurer to recover the amount paid under the contract of insurance on behalf of the insured can be taken recourse to by the Tribunal and be extended to claims and defences of the insurer against the insured by relegating them to the remedy before regular court in cases where on given facts and

circumstances adjudication of their claims inter se might delay the adjudication of the claims of the victims.

28.5. Thus, in view of the decision of Hon'ble Supreme Court in the case of Amrit Paul Singh (supra) and of Swaran Singh (supra), this Court is of the view that the learned Tribunal had not committed any illegality in directing the Insurance Company to pay the amount first, and thereafter, to recover the same from the owner of the vehicle. This Court has considered the submission of Mr. Islam, learned counsel for the appellant in MAC Appeal No. 285/2020, but in view of aforesaid discussion and finding, the same fails to mandate an acceptance of this Court.

29. It also appears that the learned Tribunal has directed to pay interest @ 9%, from the date of filing of the claim petition till payment of the amount. Though Mr. Goswami, learned counsel for the Insurance Company has submitted that the rate of interest so awarded is in higher side yet such submission left this Court unimpressed in view of the decision of Hon'ble Supreme Court in the case of Municipal Corporation of Delhi Vs. Upahar Tragedy Victims Association and Ors, reported in (2011) 14 SCC 481 and also in Kalpanaraj vs. Tamil Nadu State Transport Corporation; reported in (2014) Acci.C.R.693 (S.C.),where it is provided that the amount shall carry interest @ 9%, till realization of the amount. Hence, this Court is inclined to award interest @ 9% per annum from the date of filing the claim petition i.e. 02.04.2019.

30. In the result, this Court finds no merit in these appeals and accordingly, the same stands dismissed. However, the quantum of compensation, which, the claimant is entitled to, is modified to the extent as indicated above. The appellant is directed to pay a sum of Rs. 28,48,800/- (Rupees twenty eight lakhs forty eight thousand eight hundred only) to the respondent No.1-4 in MAC Appeal No. 332/2021, within 30 days from today, adjusting the amount, if any, already paid.

31. It also appears that the learned Tribunal had further directed that out of the total amount of compensation, an amount of Rs.6,00,000/- (Rupees Six Lakhs) each shall remain invested in the fixed deposits in favour of the claimants i.e. claimant Nos. 1, 2 & 3 (husband, son and daughter of the deceased). The said fixed deposits shall be made initially for a period of 5 years and then reinvested for another term in favour of the claimants in a Nationalized Bank. It is further provided that the accrued interest on fixed deposits shall be paid to claimant Nos. 1, 2 & 3 in their respective savings account maintained in the Bank. In given factual scenario, this Court finds no ground to interfere with the same.

32. Send down the record of the learned Tribunal with a copy of this judgment and order forthwith. The parties have to bear their own cost.

JUDGE Comparing Assistant