

GJVD220002542020



Petition filed on

: 02.08.2018

Petition registered on

: 02.08.2018

Petition decided on

: 25.03.2025

Duration :

6 years 7 months 23 days



**BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL (AUXI.)
(SHRI. H.G.VAGHELA) AT. DABHOI, DIST. VADODARA.**

**MACP.No.162/2020
(Originally instituted
as MACP No.415/2018)
Exh.____.**

Petitioners:**Age Occupation**

Guardian of Minor Monika Dilipbhai
Patanvadiya,
Dilipbhai Shivabhai Patanvadiya,
R/o. Shirola, Ta.: Dabhoi, Dist.: Vadodara.

34 Farming

V/s.**Opponents :**

- | | | | |
|-----|---|-------|-----------|
| (1) | Driver of Truck No.GJ.12.AZ.4925.
Ramzanbhai Hasanbhai Sathi,
Resi.: Mu.: Mathal, Ta.: Nakhatrana, Dist.:
Bhuj. | Adult | Driver |
| (2) | Owner of Truck No.GJ.12.AZ.4925.
Narayan Pancha Ahir,
R/o. 8, Bhadarka Soc., Near Railway Station,
Juna Vas, Mu.Madhapar, Ta.:Dist.: Bhuj. | Adult | Owner |
| (3) | Insc. Co. of Truck No.GJ.12.AZ.4925. | - | Insc. Co. |

Reliance Gen. Insc. Co. Ltd.
Address: Third Floor, Jodiyak Avenue, Opp.
Mayor Bungalow, Law Garden,
Navrangpura, Ahmedabad.

- | | | | |
|-----|---|-------|------------------|
| (4) | Driver of Jeep No. GJ.16.C.2514,
Ashokbhai Ramjibhai Vasava,
Resi.: Mota Bhilvad, Near Gujarati School,
Sadhli, Shinor, Dist.: Vadodara. | Adult | Driver/
Owner |
| (5) | Insc. Co. of Jeep No. GJ.16.C.2514,
IFFCO Tokio Gen. Insc. Co. Ltd.
Address: third Floor Sterling Complex, RC
Dutt Road, Alkapuri, Vadodara. | - | Insc. Co. |

Appearance:

Ld. Advocate Mr.S.U.Vhora for the Applicant.
Ld. Advocate Nandini Joshi for the Opponent No.3.
Ld. Advocate Mr. P.S.Kushvah for the opponent No.4.
Ld. Advocate Mr.Kamlesh Patel for the Opponent No.5.

Claim for compensation of Rs.3,00,000/- u/s. 166 of the MV Act.

JUDGMENT

1. The present claim petition has been filed by the claimants against the opponents u/s.166 of the Motor Vehicles Act, (in short M.V. Act) 1988 to get compensation of Rs.3,00,000/- for the injuries sustained by claimant minor Monika by way of the accident in question. The crux of the present petition is such that, on date 01.03.2018 when the minor Monika was going from Segva to Shirola at her village by sitting in a Jeep No.GJ.16.C.2514 and when she reached near Anandi Village, the opponent No.1 came in his truck No.GJ.12.AZ.4925 from Segva in full speed and negligent manner and dashed his front side to the rear side of the Jeep in which minor Monika was seated and resultantly she sustained injuries on right eye, face and spinal cord and thus sustained grievous injuries. Further, it is stated that due to the injuries, she was immediately admitted to Pramukhswami Hospital, Dabhoi for primary treatment and thereafter was taken to SSG Hospital, Vadodara

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for further treatment where she was admitted as indoor patient for seven days.

So, in view of the above, it is stated that, the accident has occurred on account of contributory negligence of both the opponent NO.1 and 4. An offence came to be registered regarding the accident at Shinor Police Station vide CR No.I/7/2018. So, all the opponents are jointly and severally liable to indemnify the claim.

2. It is further stated that the father of the minor has spent huge amount in treatment of the minor. The minor daughter was aged 14 years at the time of accident and was studying in standard-9. It is further stated that due to the injuries sustained in the accident, the minor daughter is likely to sustain permanent disability which can affect her studies and career in the future. Therefore, in view of the above, the claimant has sought compensation of Rs.3 lakhs under all the relevant heads.

3. Written Statement:

3.1. Notices were duly served upon the opponents. It requires to be noted here that the opponent No.4 has died and his death certificate is produced on record. The Notice is duly served to his wife namely Vasava Urmilaben Ashokbhai. Ld. Advocate for the opponent No.3 has filed its written statement vide Exh.15 wherein it is stated that the claim petition is false, frivolous and vexatious. It is further stated that the facts of the petition are not true and hence not admitted except categorically and specifically admitted in this written statement. It is submitted that the this Tribunal has no jurisdiction to hear this claim. Thereafter, it is stated that the driver of the vehicle Truck was not holding a valid and effective DL at the time of accident and further was not qualified for holding or obtaining such DL. It is further stated that the truck does not have valid fitness and permit and the

opponent No.2 is liable for breach of the provisions of MV Act. Therefore, Insc. Co. cannot be held liable to pay the compensation to the applicants. The facts with regard to age, income, occupation, injuries suffered and hospitalization are denied in toto and the claimant has put to strict proof thereof. Thus, it is stated that in view of the above facts, the petition is liable to be rejected.

3.2 Ld. Advocate for the opponent No.4 has filed its written reply vide Exh.23 wherein he has mainly denied facts of the petition. It is stated that the accident has not occurred due to negligence of the opponent No.4 but due to sole negligence of the truck driver i.e. opponent No.1 which is reflected from the FIR. Further, it is stated that the vehicle of the opponent No.4 is insured with Iffco Tokio Gen. Insc. Co. Ltd. so the liability of indemnifying compensation is of the opponent No.5 Insc. Co.

3.3 The opponent No.5 Insc. Co. has filed its written statement vide Exh.16 wherein the facts with regard to age, income and the accident as alleged in the claim petition are denied and mainly stated that there was no rashness or negligence on the part of the opponent NO.4 i.e. driver-owner of the Jeep. Further, it is stated that the accident took place due to rash and negligence on the part of the driver of Truck i.e. opponent No.1 and the IO has charge-sheeted him for his negligent driving. It is submitted this opponent has issued an 'Act Only Policy' for the subject vehicle and this does not cover the risk of occupant and as such the answering opponent may kindly be exonerated from the liability. Hence, Insc. Co. is not liable to pay compensation to the claimant and it is urged to dismiss the claim petition with costs.

4. Considering the pleadings of the parties, the following issues framed vide Exh.29 for the determination of this claim petition.

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(1) Whether the claimant proves that the injured has sustained bodily injuries due to rash and negligent driving on the part of the driver of the vehicle involved in the accident ?

(2) Whether the claimant is entitled to get compensation ? If yes, what amount and from whom ?

(3) What order ?

5. My finding on the above issues are as under :

(1) In affirmative

(2) As per final order

(3) As per final order

6. The claimant, in order to establish his case, has led oral as well as documentary evidences. However the evidences produced by either parties is referred and discussed in later part of judgment.

7. The claimant has produced following oral and documentary evidences in support of his claim petition.:

Sr. No.	Oral Evidence	Exh. No.
1.	Examination-in-chief of claimant Monika Dilipbhai Patanvadiya on affidavit.	33

Sr. No.	Documentary Evidence	Exh. No.
1.	Discharge Card of the claimant.	36
2.	Copy of School Leaving Certificate of claimant.	37
3.	Copy of Aadhar Card of the claimant.	38
4.	Copy of Pan Card of the claimant.	39
5.	Bill of Vishal Chemist - Rs.620.49/-	40
6.	Bill of Acharya Agency - Rs.816.36/-	41

7.	Bill of Vishal Chemist - Rs.52/-	42
8.	Bill of Vishal Chemist - Rs.424.99/-	43
9.	Total Bills worth Rs.1913.84/-	
10.	Certified copy of FIR.	44
11.	Certified copy of panchnama.	45
12.	Copy of Injury Certificate.	46
13.	Copy of DL of the opponent No.1	47
14.	Copy of RC Book of the opponent No.2.	48
15.	Copy of Insc. Policy of the opponent No.3.	49

8. After adducing the above evidence Ld. Advocate of the applicant and the opponent No.3 and 5 have jointly filed purshis vide Exh.47 and declared their evidence to be closed.

9. Arguments:

9.1. The Ld. Advocate for claimant has argued in tune with the facts stated in the claim petition and it is submitted that considering the order and documentary evidence, claimant has proved that she is entitled to get the amount as prayed by her in the claim petition. It is further submitted that in the accident two vehicles were involved and Hon'ble Tribunal at Karjan has fixed the negligence in proportion of 60% : 40% which is admitted by the claimant and accordingly negligence of the vehicles involved in the accident may be fixed in the ratio of 60% : 40%.

9.2. The Ld. Advocates for the Insc. Companies, respondent No.3 and 5 herein have submitted that as far as the issue of negligence is concerned, Hon'ble Tribunal at Karjan has fixed negligence in the ratio of 60% : 40% so in the case on hand also, negligence be fixed in that proportion as Insc. Companies have accepted the finding of negligence rendered by Hon'ble Tribunal at Karjan. It is further submitted that admittedly victim was a minor

at the time of accident and therefore she could not be having any income so appropriate notional income be considered for calculating the compensation. The Ld. Advocates have fairly admitted that they do not have any technical defence and therefore, just and fare compensation be awarded.

REASONS

10. Perused all the oral as well as documentary evidence produced on record and the arguments of Ld. Advocates appearing on behalf of both the parties as mentioned above at length, on the point of negligence and quantum of compensation.

11. It is settled proposition of law that, the negligence is the essential ingredient in an application filed under Sec.166 of M.V.Act. The claimants must stand on their foot to establish the negligence of the driver or owner of the vehicle concerned and the same is required to be proved by leading evidence before the Tribunal. The Insurance Company cannot be held liable for payment of compensation unless the negligence of driver or owner is proved.

12. Now, in order to substantiate the submissions of all the parties, we have to look at the documentary evidences produced on record. The complaint and panchnama regarding the accident produced on record vide Exh.41 and 42.

13. The issue No.1 is pertaining to negligence on the part of drivers of the vehicle. Negligence means failure to exercise required degree of care expected of a prudent driver. It is a settled principle of law that the burden to prove negligence on the part of driver of offending vehicle is on the claimants who assert it. The claimant has to produced reasonable evidence

that the accident took place due to negligence on the part of driver of the vehicle involved in the accident and thereafter, burden shifts upon the other side to explain the circumstances under which the accident occurred. In the claim petition for the accident under 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 cases of i) *Bimla Devi v/s. H.R.t.x., reported in AIR 2009 SC 2819* and ii) *Parmeshwari Devi v/s Amir Chand, reported in 2011 (11) SCC 635* and our Hon'ble High Court of Gujarat in the case of *Gujarat State Road Transport Corporation v/s. Kamlaben Valjibhai Vora* reported in *2001(3) GLR 2528*.

14. It is not in dispute that the present accident had occurred between truck and jeep. Thus, the question arises for consideration is whether the accident had occurred due to negligence on the part of the opponent no.1 truck driver or the opponent No.4 i.e. driver of jeep was negligent in causing accident or is it a case of contributory negligence of both the drivers.

15. In the present case, in the claim petition filed by claimant stated that, the accident took place due to composite negligence of the offending vehicles-truck and jeep in which she was seated but in the cross-examination the claimant stated that she does not remember how the accident actually occurred therefore her evidence is of no use to decide this issue. Further, from perusal of the FIR and panchnama on record, it appears that, FIR of the

accident s lodged by driver of the commander Jeep. He has stated in the FIR that, while was going towards Dabhoi from Sadhli at hat time near Anandi Village, one truck came from rear side in rash and negligent manner and dashed the Jeep on the rear side and due to this the passengers seated in the jeep were injured. As per the say of the claimant, the accident occurred due to composite negligence of both the drivers.

16. The claimants have to establish their case on the touchstone of preponderance of probability. The standard proof of beyond reasonable doubt, cannot be applied in Motor Accident Claim Petition. It is further submitted that there is no evidence led by the opponents to shows that the accident caused as a result of latent or patent defect of offending vehicle. Moreover, Insc. companies have not examined the driver of the truck or Jeep to bring on record the manner in which the accident, highlighting the negligence of motor-cyclist took place and therefore, in absence of this vital evidence, the say of Ld. Advocates for Insc. Companies stating negligence of their opposites cannot be countenanced in view of the following judgments wherein it is held that non-examination of driver of offending vehicle will lead the Tribunal to believe that the driver was rash and negligent in driving.
(1)1981 ACJ 460 [Ramsumer Habai Yadav v/s State of Maharashtra] (2)
(2)1981 ACJ 428 [Dinanath & Ors. v/s Tarachand and Sons & Ors.]

17. In view of the discussion made herein above, it is clear that if the drivers of both the vehicles involved in the accident would have been cautious enough, accident could have been averted. Hence, the Tribunal holds composite negligence of both the drivers of offending vehicles Truck and Jeep for causing accident. Thus, this Tribunal believes that the opponent No.1 was 60% negligent and the opponent No.4 was 40% negligent in causing the accident. It requires to be noted that the injured minor girl was

seated in the Jeep as a passenger at the time of the accident so she is third party and has nothing to do with the contributory negligence. Therefore, both the Insc. Companies are liable to indemnify the claim to the third party. Hence, I answer the issue No.1 in the affirmative.

18. Issue No.2 –

18.1. As a natural consequence and since having found Issue Nos.1 in favour of the applicant in affirmative, it necessarily follows that the applicant is entitled to the compensation. The only question that now remains is regarding computing and assessing the quantum of compensation which is required to be awarded herein. The Ld. Advocates for the contesting parties have made submissions in this, which I propose to deal with as hereinafter and after considering the rival submissions, I propose to make a specific award under each head as hereinafter follows :

18.2. Quantum of Compensation :-

Normally in a case of injury arising out of vehicular accident, compensation is broadly divided into seven major heads as under:-

- Pain, shock and suffering.
- Future loss of income if there is permanent disability.
- Actual loss of income.
- Cost of treatment and medicines.
- Attendant charges.
- Transportation charges.
- Charges for special diets.

18.3. In the case on hand since the claimant is a minor and was not having any income at the time of accident as she was studying, her compensation is required to be decided in accordance with the ratio laid down in judgment of

Master Mallikarjun vs. Divi. Manager, National Insc. Co. Ltd. and another. In the said judgment it has been held in para no.12 that "though it is difficult to have an accurate assessment of the compensation in case of children suffering disability on account of motor vehicle accident, having regard to the relevant factor, precedents and approach of various High Courts, we are of the view that appropriate compensation or all other heads in addition to expenditure for treatment, attendance etc. should be, if the disability is above 10% and upto 30% to the whole body Rs.3 lakhs; upto 60% Rs.4 lakhs; upto 90% Rs.5 lakhs and above 90% Rs. 6 lakhs. For permanent disability upto 10% it should be Rs.1 lakh, unless there are exception circumstances to take different yardsticks. In the instance case the disability is to the tune of 80%. Appellant had a longer period of hospitalization for about 2 months causing also inconvenience and loss of earning to parents....." and Hon'ble Apex Court awarded Rs.3,75,000/-.

18.4. Considering the judgment relied upon by the Ld. Advocate for the claimant in the case on hand admittedly the claimant was minor aged 13 years 6 months 23 days on the date of accident as reflected from Aadhar Card and School Leaving Certificate on record vide Exh.37 and 38, her birth date is shown as 09.08.2004 and has suffered injury which resulted into partial permanent disability. The disability certificate is on record vide list at Exh.28 in which disability is shown as 15% of whole man. The Ld. Advocate for Insc. Co. has submitted that disability be taken at 50% of what is shown in the disability certificate, which will come to 7.5%. The Ld. Advocate for claimant has argued that in the disability certificate disability is shown as body as a whole and not of a particular part of the body so disability be taken at 15%.

18.5 Considering then nature of injury sustained by minor as reflected from

discharge card which is on record vide Exh.36, it transpires that she has suffered lung abdominal injury which resulted in contusion of liver and contusion of right kidney, hemoperitonium and further she took treatment as indoor patient from 1.3.18 to 7.3.18. Thus, due to accident she has suffered contusion of liver and kidney with which she will have to live and it will ultimately affect her working capacity. So, this Tribunal believes that permanent disability of the minor injured can be taken as 10%. Since the disability sustained by the claimant is 10% considering the ratio laid down in the above referred judgment the claimant is entitled to get Rs.1,00,000/-. The claimant has produced medical bills and considering the injury sustained by the claimant and considering the fact that she was treated as indoor patient from 01.03.2018 to 7.03.2018 and further treatment was also carried out, the applicant has spent an amount of Rs.1913.84/- after medical treatment and medicines, bills of which are produced on record as per above-mentioned list, so the claimant is entitled to get Rs.1913.84/- over and above, an amount of Rs.1,00,000/-.

18.6. Therefore, the claimant is awarded the compensation on different heads as under :

Sr. No.	Different Heads	Compensations Rs.
1.	Compensation for injury	Rs.1,00,000/-
2.	Cost of treatment and medicines	Rs.1913.84/-
Total amount of compensation :		Rs.1,01,914/- (round figure)

19. LIABILITY

While deciding the issue No.1 this Tribunal has decided that the drivers of the both the offending vehicles Truck bearing Regi. No. No.GJ.12.AZ.4925 i.e. opponent No.3 and Jeep bearing Regi. No.

No.GJ.16.C.2514 i.e. opponent No.5 are negligent in causing the accident and considering the Insc. Policies which are produced on record vide Exh.49 and Mark-24/1 respectively and on the date of accident, Insc. Policies were valid. The Ld. Advocate for both the Insc. Co. have fairly admitted that the vehicles were insured with their Insc. Companies. So, it is established that vehicle No.GJ.12.AZ.4925 was insured with respondent No.3 and vehicle No. GJ.16.C.2514 was insured with respondent No.5. The Ld. Advocate for Insc. Companies have not taken any technical defence and therefore both the opponent No.3 and 5 are liable to pay the compensation to the extent of 60% and 40% respectively as decided hereinabove.

20. Considering the judgment of Hon'ble Apex Court in case of *Yeramma & Ors. V/S G. Krishnamurthy & Ors. reported in 2014 ACJ 2161*, it would be just and proper to award interest at the rate of 9% per annum. Therefore, looking to the circumstances of the case, the claimant is awarded interest from the date of the petition till the realization of the amount. Hence, I pass the following final order :

ORDER

1. The petition is hereby partly allowed with proportionate costs and interest against the **Opponents**.
2. The claimants are entitled to recover total compensation of **Rs.1,01,914/- (Rupees One Lakh One Thousand Nine Hundred and Fourteen Only)** in the proportion of 60% i.e. **Rs.61,148/-** from respondent No.1 to 3 and 40% i.e. **Rs.40,766/-** from respondent No.4 and 5 jointly and/or severally, 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.
3. The opponents herein are directed to deposit the awarded amount to the credit of bank account of tribunal as per below mentioned details

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directly by NEFT or RTGS mode, after deducting the amount of interim compensation any, paid under section 140 of M. V. Act, with in one month from date of this order.

Account holder name - Motor Accident Claim Tribunal (Auxil), Dabhoi.

Current account No.- 40752006361

IFSC Code - SBIN0000352

Branch Code - 352.

4. The Insurance Companies will communicate the factum of deposit forthwith / expeditiously to the MACT with a copy to the beneficiary or their Ld. Counsel as the case may be. On such deposit being made, the Insc. Co. submit a letter to the registry of MACT furnishing the following information.

Sr.No.	Particulars	Details
1.	MACP No.	
2.	Tribunal Name	
3.	Date of award	
4.	Compensation amount	
5.	Bank transaction reference no./unique transaction (UTR) no.	

5. The opponents shall deposit the full amount of compensation and shall not deduct tax under u/s.194-of Income Tax Act., on the interest awarded by this tribunal as per law laid down by Hon'ble division bench in case of The Oriental Insurance Co.,Ltd. V/s. Chief Income Tax Commissioner (TDS) being S.C.A. No.4821.
6. On depositing the above amount of award by the opponents in this Tribunal, the amount of Court Fee Stamp, if recoverable on the awarded amount, be recovered from the awarded amount and the same be taxed as the costs of the petition.

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7. Registry/MACT department shall E-mail an authenticated copy of the award to the E-mail account of the Insc. Companies.
8. Award be drawn accordingly.

Signed and pronounced in the open Court on 25th day of March, 2025.

**25.03.2025.
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**Sd/-
[HARISHCHANDRASINH GULABSINH VAGHELA]
M.A.C. Tribunal (Auxi.) &
2nd Addl. District Judge,
Vadodara @ Dabhoi.**

UNIQUE ID CODE NO.GJ00590

//S.M.C//