

Filed On: 17/12/2023
Registered on : 17/12/2023
Decided On : 19/06/2026
Duration : Y M D

**BEFORE THE MOTOR ACCIDENT CLAIM TRIBUNAL (AUX.)
AT PETLAD**

MAC PETITION NO. 92 OF 2023

Ex._____

APPLICANT :-

Shahilamahammad Jiyaudin Shaikh,
Age 19, Labour,
R/o Petlad, Taivala, Dist. Anand

V E R S U S

OPPONENTS :-

PARTIES OF RICKSHAW NO. GJ-23 AU-9831

1. Zakirali Shaukatali Saiyad.....Driver/Owner
R/o Taivada, AT Petlad, Dist. Anand
2. Bajaj Allianz General Insurance Co. Ltd.
204/205, Time Square, Nr. Parisima, Complex,
C.G. Road, Ahmedabad

APPEARANCE :

Ld. Advocate Mr. H.I. Malek for the Applicant
Opponent No. 1 Served but not appeared
Ld. Advocate Mr. S.R.Shelat for the Opponent No. 2

CLAIM FOR COMPENSATION OF RS.10,00,000-00
J U D G M E N T

1. The present claim petition is filed by the applicant under the provision of Sec.166 of The M.V. Act against the opponents to get compensation as the applicant sustained grievous injuries in a vehicular accident which was occurred on 15/10/2023.
2. It is the case of the applicant that on 15/10/2023 he was traveling as a passenger in rickshaw No. GJ-23 AU-9831, and

when they reached near village Vahera, Vaniya Kuva, opponent No. 1 was driving the said rickshaw with excessive speed in rash and negligent manner at that time from opposite direction one three wheel tempi came on the road and dashed with the rickshaw as a result he sustained injury of fracture on right leg and also sustained injuries on other parts of his body and immediately he was shifted to Shraddha Hospital, Borsad, where he remained as indoor patient and he has incurred handsome amount towards medicine, medical treatment, attendant, special diet etc. Further, it is the say of the applicant that at the time of accident he was 19 years old hale and hearty, and earning 700-00 per day by way of doing labour work. Further, it is the say of the applicant that due to accidental injuries disability has been developed which has adversely affected his earning capacity. Hence, applicant has filed present petition to get compensation of Rs. 10,00,000-00 from all the opponents.

3. The opponents are duly served with the notice. The opponent No. 1 has not appeared before this Tribunal.
4. The Opponent No.2 insurance company has appeared through its Id. advocate and filed their written statement at Ex. 11 and denied all the averments made in Ex. 1. It is

contended that the age and income and injuries sustained by the applicant are not true and it should be proved by cogent evidence. It is contended that alleged accident is caused due to sole negligence of unknown vehicle. It is contended that charge sheet is not filed against the driver of rickshaw and accident occurred due to unknown vehicle hence, insurance company of rickshaw is not liable to pay compensation. It is contended that the claim petition filed by the applicant is highly exaggerated and too broad and too vague. Ultimately, it is contended to dismiss the claim petition with costs.

5. From the above pleadings of the parties following issues framed by my Id. predecessor vide Ex. 12 for determination of the present claim petition.
 1. Whether the applicant proves that he suffered injury due to the rash and negligent driving by the driver of the vehicle involved in the accident ?
 2. Whether the applicant is entitled to any compensation ? If yes, what amount and from whom ?
 3. What Award and order ?
6. My findings to the above Issues, for the reasons given as under:-
 1. In the Affirmative

2. In the affirmative
3. As per final order.
7. Ld. advocate for applicant has mainly argued that at the time of accident applicant was traveling in rickshaw as a passenger and unknown vehicles dash with the rickshaw, so being third person he can claim compensation from any of the tort fessor. It is argued that though charge sheet has been filed against unknown vehicle ,both the vehicles were dash from opposite direction and opponent no.1 was also negligent for the accident. It is argued that the applicant has not proved his income, however looking to the nature of income, minimum wage of unskilled should be considered. Ultimately, it is argued to allow present claim petition. In support of his argument he relied on the following judgment.
 1. Mayaben Ramanlal Jaiswal v/s Rajubhai Chimanlal Jaiswarl,2014 ACJ 859
 2. National Insurance co. v/s Shella and others,2013 ACJ 290
 3. Chauhan Vikaramsinh v/s Zala Arjunsinh Fatesinh 2022 ACJ 422
 4. 2015 ACJ 1441, Khenyei v/s New India Assurance
 5. 2019 ACJ 600, Hemendrasinh Mansinh Jadaav v/s Sanjaybhai Govindbhai

8. Against this Id. advocate for the insurance company has filed written arguments vide Ex. 44. It is mainly argued that as per FIR unknown three tempi came from opposite direction with rash and negligent manner and dashed with the rickshaw and applicant has stated in his statement that accident due to negligence on the part of three wheel tempi. Police has also filed "A" summary against the three wheel tempi which is produced vide Ex. 23. Hence, it is proved that the alleged accident was not occurred due to negligence on the part of opponent No. 1. Ultimately, it is argued to exonerate the opponent No. 2. In support of his argument he relied on the following judgment.

1. First Appeal no. 3354/2000, in case of National insurance v/s Rasilaben Yadav
2. 2014 ACJ 1075, New India Assurance v/s Jaysukhlal Maganlal Doshi
3. 2012 ACJ 1305, Surender Kumar Arora v/s Dr. Manoj Bisla

:: R E A S O N S :

9. In support of his case applicant has produced following oral and documentary in present case.

Ex. 15	Deposition of Applicant
Ex. 26	Copy of Driving Licence of Opponent No. 1
Ex. 27	Copy of RC Book of Rickshaw

Ex. 28	Copy of Insurance Policy of Rickshaw
Ex. 29	Copy of Permit
Ex. 30	Copy of FIR
Ex. 31	Copy of Panchnama
Ex. 32	Disability Certificates
Ex. 33	Copy of Injury Certificate
Ex. 34	Copy of Injury Certificate of maruti Hospital
Ex. 35 & 36	Discharge summary of Shraddha Hospital
Ex. 37	Discharge Summary of Civil Hospital
Ex. 38 & 39	Discharge Summary of Nutan Ortho. Hospital
Ex. 40	Discharge Summary of Om Hospital
Ex. 41	X-ray
Ex. 42	Medical Bills for Rs. 6,00,979-00.
Ex. 18	Disability Pursis for 30% Disability body as a whole

ISSUE NO. 1 :

10. Applicant has deposed vide Ex. 15 in line of Ex. 1 claim petition. In support of his say he has produced copy of FIR and Panchnama vide Ex. 30 and 31 respectively. In cross examination of Id. advocate for the opponent No. 2, applicant has admitted that he had no knowledge who has lodged complaint. It is admitted that police has recorded his statement. Now, FIR produced vide Ex. 30 was lodged by driver of rickshaw, has specifically stated before police that when they reached near place of incident from opposite direction one Atul Shakti three wheel tempi came by overtaking another vehicle which was going ahead from his

with excessive speed and dashed with his rickshaw and after the accident he flee from place of incident. The Police has filed 'A' summary report against the known Three Wheel Tempis. Now, it is established that both the vehicles i.e. Rickshaw and Unknown Three Wheel Tempo were involved in the alleged accident. Ld. Advocate for the insurance company argued that as per FIR accident occurred due to sole negligence of unknown vehicle and applicant in his cross examination admitted FIR so, in absence of negligence under sec.166 of MV Act applicant is not entitle to get compensation from the opponent no.2. Here, it is admitted fact that present applicant was sitting inside the rickshaw and complaint was given by the driver of rickshaw. Being passenger sitting back side he should not have personal knowledge about occurrence of accident. The opponent no. 1 Rickshaw driver has not stepped into the witness box to throw light on the incident. Here, complaint is filed by the rickshaw driver who himself driving rickshaw, so it can be said that he will not mention his own negligence while giving complainant. I have gone through judgment cited by the Ld. Advocate for the insurance company on the point of negligence. But considering facts of present case same are not applicable to present case. Therefore, in view of the

above discussed oral and documentary evidence, I came to the conclusion that though charge sheet is filed against unknown vehicle, here, head on collusion between two vehicle, Opponent No. 1, rickshaw driver was negligent to the extent of 20% and driver of unknown vehicle was negligent to the extent of 80% for happening of the accident. Hence, I reply issue No. 1 accordingly.

ISSUE NO.2 :

11. The applicant has stated in his deposition at Ex. 15 that in the alleged accident he has sustained serious injury of fracture and also sustained injuries on other parts of his body and immediately he was shifted to the Maruti Hospital, Borsad, where he remained as indoor patient from 15/10/2023 to 26/10/2023 and thereafter admitted as indoor patient at Shraddha Hospital, Borsad, from 30/10/2026 to 01/11/2023 and from there he was shifted to SSG Hospital, Vadodara, where he remained as indoor patient from 05/01/2024 to 01/02/2024 and again admitted at Nutan Orthho. Hospital, Anand, from 03/04/2024 to 15/04/42024 and thereafter again admitted on 13/07/2024 to 19/07/2024 and on 25/03/2025 one day he was admitted at Om Hospital, Anand. Total he remained as indoor patient for 65 days. Further, he has stated that at the time of accident he

was 19 years old hale and hearty and earning Rs. 700-00 per day by way of doing labour work. The applicant has not produced any evidence to prove his income. Therefore, in absence of any cogent evidence considering the nature of work done by the applicant, I am of the opinion to assess Rs. 7,000-00 monthly income of the applicant at the time of accident. Therefore, I fixed **Rs. 7,000-00** monthly income of the applicant at the time of accident.

12. So far as disability is concerned, the applicant has produced disability certificate vide Ex. 32 issued by Dr. Kiran Patel, M.S. Ortho, assessing 37% disability body as a whole. However, Id. advocate for the applicant has filed pursis vide Ex. 18 and declared to consider 30% disability body a whole and Id. advocate for the opponent No. 2 has endorsed "No Objection". Hence, 30% disability body as a whole is agreed upon between the parties.

13. So far as the multiplier is concerned, applicant has stated in his deposition that he was 19 years old at the time of accident. He has not produced any evidence to prove his age at the time of accident. However, in the MLC Certificate of Shraddha Hospital, Borsad, produced vide Ex. 33, the age of applicant has been mentioned 19 years. Therefore, considering 19 years age of the applicant, as per Sarla

Varma's case **18** multiplier is required to be applied. Therefore, the applicant would be entitled to Rs. 7,000-00 X 30% X 12X 18 years = **Rs. 4,53,600-00** as against future loss of income.

14. Now, so far as bills for medicine and medical treatment is concerned, applicant has produced medical bills vide Ex. 42 for Rs. 6,00,979-00. Therefore, applicant is entitled to get **Rs. 6,00,979-00** towards medical expenses. Hence, I award the same.

15. Looking to the nature of injury and disability and prolong treatment, I am of the opinion that the applicant is entitled to get **Rs. 30,000-00** towards the Pain shock and suffering. Hence, I award the same.

16. As per the discharge summary of Shraddha Hospital, SSG Hospital, Nutan Orthopedic Hospital, produced on record vide Ex. 35 to 40 applicant was admitted in those hospitals for total 65 days due to accidental injuries. Therefore, looking to the nature of injury, applicant is entitled for 5 months income towards actual loss of income. Therefore, I am of the opinion that the applicant is entitled to get. **Rs. 35,000-00** towards actual loss of income and **Rs. 15,000-00** for rich diet, transportation charges, and attendant charges, would be just and proper. Therefore, the applicant

is entitled to get the aforesaid amount of compensation which can be reclassified as follows:

Future Loss of Income	4,53,600-00
Medical Bills	6,00,979-00
Pain, Shock and sufferings	30,000-00
Actual Loss of Income	35,000-00
Special Diet, Transportation & Attendance	15,000-00
Total Rs.	11,34,579-00 = Round off Rs.11,34,600-00

17. In the present case applicant has restricted their claim of compensation to Rs. 10,00,000-00. However, as per above discussion applicants are entitled to get compensation of **Rs. 11,34,600** and as per the ratio laid down in the case of Rajesh V/s Rajbir Singh reported in LAWS (SC) 2014-4-124 in para-13 of the above cited judgment which reads as under;

“In a report on accident, there is no question of any reference to any claim for damages, different heads of damages or such other details. It is the duty of the Tribunal to build on that report and award just, equitable, fair and reasonable compensation with reference to the settled principles on assessment of damages. Thus, on that ground also we hold that the Tribunal / court has a duty, irrespective of the claims made in the application, if any, to properly award a just, equitable, fair and reasonable compensation, if

necessary ignoring the claim made in the application for compensation”.

18. Looking to this judgment of the Hon'ble Supreme Court, Tribunal can award more amount than the claim, if it is just, fair and reasonable. Therefore, the applicant is entitled to get more amount than the claim.

19. Now, so far as the liability is concerned, as discussed in issue No. 1 driver of both the vehicles i.e. Rickshaw No. GJ-23 AU-9831 and unknown Three Wheel Tempis were negligent for happening of accident and this is a case of composite negligence, and as per the ratio laid down by the Hon'ble Apex Court in case of *Khenyei v/s New India Assurance co.*, reported in 2015 ACJ 1441, it is observed that in case of composite negligence, plaintiff/claimant is entitled to sue both or any one of the joint tortfeasors and to recover the entire compensation as liability of joint tortfeasors is joint and several. In case of composite negligence, apportionment of compensation between two tortfeasors vis-à-vis the plaintiff/claimant is not permissible. He can recover at his option whole damage from any of them. In case all the joint tortfeasors have been impleaded and evidence is sufficient, it is open to the court/Tribunal to determine inter se extent of composite negligence of the drivers. However, determination of the extent of negligence

between the joint tortfeasors is only for the purpose of their inter se liability so that one may recover the sum from the other after making whole of payment to the plaintiff/claimant to the extent it has satisfied the liability of the other. In case both of them have been impleaded and apportionment/extent of their negligence has been determined by the court/Tribunal in main case, one joint tortfeasor can recover the amount from the other in the execution proceedings."

20. Hence, in view of the above discussed facts and circumstances of the case and also the ratio laid down by the Hon'ble High Court, in above cited (supra) case, I came to the conclusion that the applicant is entitled to recover compensation from the opponent No. 1 and 2 jointly and severally. Moreover, as per copy of insurance policy produced on record vide Ex. 28 said Rickshaw was duly insured with the opponent No. 2 insurance company in the name of opponent No. 1 which covers the date of accident. Therefore applicant is entitled to recover above mentioned amount of compensation from the opponent No. 1 and 2 jointly and severally.

21. In case of **Dharmpal and Others V/s. U.P. Road Transport** reported in **A.I.R 2008 S.C 2312**. The Hon'ble

Apex Court has held that award of interest would normally depends upon the bank rate prevailing at relevant time. Applying this ratio, presently nationalized bank on an average which giving 7% p.a. interest on fixed deposit. Therefore, in the present cases, end of justice would meet if the award of compensation carries interest at the rate of 7% per annum from the date of filing of claim petition till its realization.

22. Hence, in view of the above discussion, I have answered issue No. 2 in the affirmative accordingly and in reply to issue No. 3, following final order is passed.

ORDER

1. Present Claim petition is hereby allowed.
2. The the opponents No. 1 and 2 do jointly and severally pay the applicant **Rs.11,34,600-00 (Rupees Eleven Lacs Thirty Four Thousand Six Hundred only)** together with interest at the rate of 7% p.a. from the date of application till realization of amount.
3. The opponents do pay the cost of the applicants and also bear their own.
4. The interim amount of compensation, if any, paid or deposited under the principle of "No Fault Liability" shall be adjusted in the amount of compensation awarded in this final adjudication.
5. The opponents are directed to deposit the amount of compensation within three months from the date of this order.

6. When deposited, after deducting deficit court fees, remaining 70% amount shall be invested in F.D.R. in any Nationalized Bank in the name of the applicant for the period of five years and the remaining 30%, shall be paid to the applicant in cash by Account Payee Cheque only. The concerned Bank is hereby directed not to allow any loan, advances or withdrawal against the said F.D.Rs. except prior permission of this Tribunal. However, the applicant will be entitled to draw quarterly interest on the amount of deposit in the F.D.Rs. in case, if he feels necessary.

7. Award be drawn accordingly.

➔ Pronounced in the open Court today on this 19nd day of June, 2026.

Date : 19-06-2026

Place : PETLAD

(Zankhana V. Trivedi)
MAC Tribunal (AUX.) &
2nd Additional District Judge,
Petlad,
JUDGE CODE - GJ-00676

Tarun Patel, PS