


GJBK010017882022 	DATE OF INSTITUTION	02/08/2022		
	DATE OF REGISTRATION	02/08/2022		
	DATE OF JUDGMENT	10/03/2026		
	DURATION	DAYS	MONTHS	YEARS
		08	07	03

**IN THE TRIBUNAL OF MOTOR ACCIDENT CLAIMS**  
**(3RD AUX.), AT:-PALANPUR, DIST.B.K.**

**M.A.C.P.No.132/2022**

**Ex.:** \_\_\_\_\_

**Claimant.**

**Prajapati Shitalben Mittalkumar,**  
 Age: 27 years, Occ.Nothing( at present)  
 R/o. Harigadh, Tal.Danta, Dist.Banaskantha.

**Versus**

**Opponents.**

- 1) **Legal heirs of Patel Bharatbhai Prahladbhai,**  
 1/1 Ramilaben Wd/o.Bharatbhai Patel,  
 Age: Adult, Occ.Households,  
 1/2 Sandipbhai Bharatbhai Patel,  
 Age: Adult, Occ.business,  
**Both are residing at:**  
 C/o.Ghanshyam Travels, Office No.3,  
 Aashirvad Chambers, Behind Paras Police Station,  
 Katargam Road, Katargam, Surat, Tal./Dist.Surat  
**(Owner of Luxury Bus No.GJ-14-V-8600)**
- 2) **National Ins. Com. Ltd.,**  
**Add:** Gathamam Gate, Tal.Palanpur, Dist.Banaskantha.  
**(Ins. Com. Of Luxury Bus No.GJ-14-V-8600)**
- 3) **Saddam Billiyadkhan,**  
**Add:** C/o.Plot No.72, GEB Office, Jawahar Road No.4,  
 Udhna, Udhna Gam, Surat.  
 Permanent Residence: Raysina, Sohna Gurugram, Haryana,  
**(Owner of container No.RJ-14-GJ-8311)**

4.	<b>Rakesh Trilokchand Bansal,</b> Age: Adult, Occ.Transport, R/o.Plot No.72, Near GEB Office, Jawahar Road No.4, Udhna Surat, Udhmagam, Dist.Surat. <b>(Owner of container No.RJ-14-GJ-8311)</b>
5.	<b>The New India Assurance Com. Ltd.,</b> Add.First Floor, 104 to 106, H.K.Tower, Hanuman Tekri, Palanpur, Tal.Palanpur, Dist.Banasakantha. <b>(Ins. Com. of container No.RJ-14-GJ-8311)</b>
6.	<b>Ramkisan Suryaben Ware,</b> At-Dhamangaon Deviche, Tal.-Pathardi, Near Jagdama Devi Mandir, Ahmednagor-414102. <b>(Owner of Truck no.MH-12-FC-7351)</b>
7.	<b>Go Digit Gen. Ins. Com. Ltd.,</b> Add: 10 <sup>th</sup> Floor, 1001-2002, Ratnakar Nine Square, Near Keshavbag, Vastrapur, Ahmedabad, Tal.Ahmedabad, Dist.Ahmedabad. <b>(Ins.Com. of Truck no.MH-12-FC-7351)</b>

**Subject : Claim petition filed u/s.166 of the Motor Vehicles Act, 1988, to get compensation of Rs.12,32,100/-.**

<b><i>Appearance:-</i></b>	
Ld. Adv. for the applicant.	Mr.A.N.Shera.
Ld. Adv. for the Opponent No.1	None.
Ld. Adv. for the Opponent No.2	Mr.B.S.Solanki.
Ld. Adv. For the Opponent No.3	Mr.K.A.Dabhi
Ld. Adv. For the Opponent No.4	Mr.K.A.Dabhi.
Ld. Adv. For the Opponent No.5	Mr.R.A.Thakkar.
Ld. Adv. For the Opponent No.6	None.
Ld. Adv. For the opponent No.7	Mr.B.A.Raval

**-: J U D G M E N T :-**

- (1) Present claim petition is filed by the applicant, under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.12,32,100/- from opponents, on account of accidental injuries caused to the applicant in the accident occurred on 03/12/2019 involving vehicles mentioned in the petition.
- (2) The brief facts of the present claim petition are that on 03/12/2019, the applicant was traveling in luxury no.GJ-14-V-8600 from Surat to her native Harigadh. When the bus was passing through Golden Circle Bridge to Dena Circle, at that time, a container no.RJ-14-GJ-8311, driven rashly and negligently heading ahead of luxury bus, violently hit a truck no.MH-12-FC-7341, which was heading ahead of container. As a result of this collision, the speed of the container suddenly retarded and luxury bus dashed the container heading ahead of it. Hence, the accident had occurred and applicant suffered severe injuries all over her body in the said accident. This gave rise to the filing of the present claim petition by the applicant.
- (3) It appears from the record that opponents have been duly served with the notices.

Despite being served with the notice, opponent no.1 has chosen not to appear in this proceeding to contest the

claim petition filed by the applicant.

Learned Advocate Mr. T.M.Joshi initially and thereafter Ld. Advocate Mr. B.S.Solanki for the opponent no.2 has appeared and filed his written statement vide Exh.23 and opposed the claim petition.

Learned Advocate Mr.K.A.Dabhi for the opponent no.3 and 4 has appeared and opposed the claim petition of the applicant.

Learned Advocate Mr.R.A.Thakkar for the opponent no.5 has appeared and filed his written statement vide Exh.19 and opposed the claim petition by denying each and every averments of the claim petition.

Despite being served with the notice, the opponent no.6 has chosen not to appear in the proceeding to contest the claim petition.

Learned Advocate Mr.B.A.Raval for the opponent no.7 has appeared and filed his written statement vide Exh.41, wherein, he denies each and every averments of the claim petition.

- (4) In view of the pleadings of the parties, this tribunal has framed the following issues at Exh.33, which are as under;

- (1) Whether the applicant proves that she sustained injuries due to rash and/or negligent driving of the vehicle involved in the accident ?
  - (2) Whether the applicant proves that she is entitled to get compensation ? If yes, who is responsible to pay compensation and to what extent ?
  - (3) What award ?
- (5) My findings for the above noted issues are as under:-
- (1) In affirmative.
  - (2) As per final order.
  - (3) As per final order.

### **REASONS**

- (6) The parties have led the following evidence to prove and disprove the contents of claim petition;

<b><u>Sr. No.</u></b>	<b><u>Oral Evidence</u></b>	<b><u>Exh.</u></b>
1.	Affidavit cum examination-in-chief of the applicant.	40
2.	Affidavit of Patel Nikhilkumar Rameshbhai.	75

<b><u>Sr. No.</u></b>	<b><u>Documents</u></b>	<b><u>Ex.</u></b>
1.	Certified copy of complaint.	45
2.	Certified copy of panchanama of place of offence.	46
3.	Medical Bills.	43 & 47

4.	Disability Certificate.	48
5.	Copy of charge-sheet.	51
6.	Copy of insurance policy of Luxury Bus.	52
7.	Copy of Fitness of luxury bus.	54/76
	Copy of School Leaving Certificate.	82

(7) **Issue No.1** :-

Heard, learned Advocate for the parties and perused the record. Perused the complaint, panchnama of place of accident, charge-sheet etc., facts such as date, time, place, involvement of vehicles etc. are not disputed. Looking to the medical papers on record, the accidental injuries of applicant has also become undisputed.

Now, so far as the negligence which led to the fateful accident is concerned. Applicant has filed her affidavit-cum-examination-in-chief at Exh.40, wherein she has reiterated the facts of the claim petition. Learned Adv. Mr. B.S.Solanki for the opponent no.2 has also cross-examined her, wherein, she has admitted that she was traveling from Surat to Danta in Ghanshyam Travels. She has further admitted that she does not know the exact time of accident as she was sleeping in the bus at the time of accident. She has further admitted that she does not know as to how the accident had occurred.

During the cross-examination of the applicant by learned Advocate Mr. B.A.Raval for the opponent no.7, she has admitted that she does not know against whom the

complaint was lodged. She has further denied the suggestion that the container moving ahead bus dashed the truck carrying cotton and then luxury dashed the container.

At this stage, it is worthwhile to note here that 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. This tribunal has taken aid of the judgment in **Bimla Devi v/s HRTC, reported in AIR 2009 SC 2819 and Parmeshwari Devi v/s. Amir Chand, reported in 2011(11) SCC 635.**

Perused the complaint, it is lodged against the driver of the vehicle container involved in the accident. As per the complaint, the vehicle container which was heading ahead of the luxury bus, dashed the truck moving ahead of container. As a result, the truck fell down in the ditch and the vehicle container suddenly slowed down due to this the luxury bus coming from behind the container dashed the vehicle container. Hence, the accident had occurred. Looking to the panchnama of the place of the offence, it reveals that all the vehicles involved in the accident are lying on the spot of accident. They have suffered massive damages in the accident. It reveals that

the vehicle container has become sandwiched between the truck and luxury bus. Despite being granted with opportunities, the opponents have not examine the driver of the vehicles involved in the accident to disbelieve the manner of accident as suggested by the applicant. No independent witness turn up before the tribunal to shed light on the manner of the accident. When the accident had occurred, it was dark, so the drivers of vehicles are supposed to take care and caution, while driving their vehicles. It was the vehicle container, which first dashed the truck then the luxury bus dashed the container from the behind side. Hence, it was the duty of the driver of the container to maintain safe distance with the truck ahead of it. However, the driver of the vehicle container failed to take such care and dashed the truck. Similarly, the driver of the luxury bus was also duty bound to maintain safe distance from the vehicle container to avoid any collision. However, the driver of the luxury bus also failed to maintain such distance. This resulted in the second collision between the luxury bus and the vehicle container. No evidence available on record, which goes to show that the vehicle truck heading ahead of the vehicle container is responsible for any of the collision occurred between the vehicles involved in the accident.

Learned Advocate for the applicant has produced the copy of judgment of cognate MACP No.218/2020, arisen

out of the same accident, wherein, this tribunal has already decided the manner of accident and deal with the point of negligence. In this judgment, this tribunal has held that the accident had occurred due to the negligent driving of driver of the luxury bus and vehicle container involved in the accident. Inter se negligence of drivers of luxury bus and container is fixed in the ratio of 40:60 respectively. Thus, considering the aforesaid discussion as well as bearing in mind the principles of res judicata, this tribunal decides Issue No.1 in "**AFFIRMATIVE**".

(8) **Issue No.2 :**

In the case on hand, it is established that the accident had taken place due to the negligent driving of drivers of luxury bus and vehicle container involved in the accident and she had suffered serious injuries. Therefore, she is entitled to get compensation as per the provision of M.V.Act.

- (9) Learned Advocate Mr. B.S.Solanki for the opponent no.2 has argued that the luxury bus was not having valid and effective permit to ply the bus on the road. He has also produced the extract of permit from the RTO at Exh.76, duly certified by Asst. RTO, Amreli. On bare perusal of the said extract of permit, it reveals that effective date of of the luxury bus No.GJ-14-V-8600 as 03/02/2020 to 02/02/2025. The period of permit mentioned in the extract of permit is after the date of accident. The

insurance company has not examined the any official from the RTO, which has issued such details. There is no evidence which is directly showing the fact that the luxury bus was not having valid permit as on the date of accident. In these circumstances, it would not be apt to reach at the conclusion that at the time of accident, the luxury was not having any permit to ply on the road. Hence, the defence of the insurance company cannot be believed.

It is apt to note here that the insurance company has settled the other claims arising out of the same accident in lok adalat. The orders passed by different tribunal in the claim petition arising out of the same accident are placed on record. As discussed above, the accident was caused due to the negligent driving of drivers of the luxury bus and the vehicle container involved in the accident. The driver of the truck was held not guilty for the accident. Looking to the insurance policies of both these vehicles i.e. luxury bus and vehicle container, both the insurance policies of the vehicles were in force at the time of accident. Hence, opponents no.1 to 4 are jointly and severally liable to pay compensation to the applicant.

Accordingly, the opponent no.5 to 7 are exonerated from the liability of payment of compensation as the accident was caused due to the negligent driving of drivers of the luxury bus and the vehicle container.

- (10) The next important question that requires determination is of just, fair and reasonable amount of compensation, which needs to be awarded to the claimant for having suffered injuries.
- (11) Learned Advocate for the applicant has stated that the applicant was doing private tuition classes and she was earning Rs.15,000/- per month therefrom.

Per contra, learned Advocates for opponent no.2 and 4 have submitted that applicant has not produced on record any cogent evidence to prove her income from private tuition classes. Hence, they have prayed to consider the appropriate income of applicant.

Looking to the record, it reveals that the applicant has not produced any cogent evidence to prove her income. The applicant has also not produced any evidence which may portray that the applicant was providing tuition classes to the students. However, it is not the case of the opponents that the applicant was not working at all at time of accident. It is relevant to observe that the accident had occurred in the year 2019. The act is beneficial piece of legislation. Thus, considering the minimum wages and inflation prevalent in the year of accident, this tribunal is of the view that Rs.10,000/- is considered as the notional income of the applicant per month, which is just and proper.

(12) So far the income of future prospect in injury case is concerned, in the case of **Pappu Deo Yadav vs. Naresh Kumar**, AIR 2020 SC 4424, the Hon'ble Apex Court has held in para 7 as under;

*“7: Two questions arise for consideration: one, whether in cases of permanent disablement incurred as a result of a motor accident, the claimant can seek, apart from compensation for future loss of income, amounts for future prospects too; and two, the extent of disability. On the first question, the High Court no doubt, is technically correct in holding that Pranay Sethi involved assessment of compensation in a case where the victim died. However, it went wrong in saying that later, the three-judge bench decision in Jagdish was not binding, but rather that the subsequent decision in Anant to the extent that it did not award compensation for future prospects, was binding. This court is of the opinion that there was no justification for the High Court to have read the previous rulings of this court, to exclude the possibility of compensation for future prospects in accident cases involving serious injuries resulting in permanent disablement. Such a narrow reading of Pranay Sethi is illogical, because it denies altogether the possibility of the living victim progressing further in life in accident cases - and admits such possibility of future prospects, in case of the victim's death.”*

(12.1) This tribunal also places reliance on the judgment of the

Hon'ble Supreme Court in the case of **Erudhaya Priya vs. State Express Transport Corp. Ltd., AIR 2020 4284**, wherein, the victim aged about 23, who sustained 31.1% permanent disability, the Hon'ble Apex Court granted 50% rise in the income of the claimant.

(12.2) Even in the recent judgment in case of **Karthik Subramanian Vs. B. Sarath Babu & Anr., reported in 2021 ACJ 993**, the Hon'ble Apex Court has assessed compensation adding 50% amount of the actual income of the injured claimant. In the case before the Hon'ble Supreme Court, the injured claimant was aged about 34 years and had sustained permanent partial disablement to an extent of 40%.

(12.3) To answer this issue reference is required to be made to the ratios laid down in the cases of **V.Mekala vs. Malathi, reported in 2014 ACJ 1441 (SC); Sunita Tokas vs. New India Assurance Co. Ltd., 2019 (20) SCC 688; Rajendra Singh vs. N.I.Com., AIR 2020 SC 595 and Kirti vs. Oriental Insurance Com., ACJ 2021 1 (SC), Smt. Meena Pawaia vs. Ashraf Ali, Civil Appeal No.6724 of 2021, decided on 18<sup>th</sup> November, 2021**, wherein it has been held that even in the case where notional income has been taken into account for calculation of amount of compensation, future prospect shall be taken into consideration.

(13) The Hon'ble Apex Court in **National Insurance Co. vs.**

**Pranay Sethi, 2017 (16) SCC 680**, has clearly provided the guidelines regarding the prospective income. Learned Adv. for the applicant has stated that the applicant was aged about 27 years old at the time of accident. Looking to the school leaving certificate of the applicant, which mentions the date of birth of the applicant as 16/11/1993. The accident had occurred on 04/12/2019. Thus, on comparing both these dates, it can be concluded that the applicant was 27 years old approx at the time of accident. Therefore, as per the judgment of Hon'ble Apex Court in **Pranay Sethi(supra)**, the applicant is entitled to get 40% income towards the prospective income of the applicant. Therefore, the total monthly income of applicant including the prospective income works out at **Rs.14,000/- [i.e.Rs.10,000 (per month) + Rs.4000/- (40%prospective)]**.

- (14) The applicant has produced disability certificate issued by Dr.Nirav Gadhvi, M.S.(Ortho) at Exh.48 wherein the doctor has evaluated the permanent partial disability of applicant to the extent of 22.38% of the affected limb. Learned Advocate Mr.B.A.Raval of the opponent-insurnace company has admitted the disability of the applicant to the extent of 11% of the whole body at Exh.39. Thus, considering the evidence as well as the arguments of both the sides, this tribunal has reason to believe that the applicant has suffered 11% disability pertaining to the whole body.

- (15) As discussed above, applicant was aged about 27 years at the time of accident. So, keeping in view the judgment of **Sarla verma V/s. Delhi State Transport Corporation and another 2009 ACJ 1298**, as the age of the claimant was 27 years at the time of accident, I deem it fit to give **multiplier of 17**.
- (16) Therefore, **Future Loss of income** would come to **(Rs.14,000/- x 12 x 11% x 17) = Rs.3,14,160/-**.
- (17) Now, so far as other pecuniary and non-pecuniary losses are concerned. The applicant has produced the medical bills worth Rs.1,20,100/- approx. The applicant has not produced any bills regarding her expenses like transportation charges, attendance charges, special diets etc. But it is established on record that the applicant has sustained severe fracture injury of shaft. Therefore, it is obvious that she must have taken medical treatment for her accidental injuries and has incurred expenses towards transportation, attendances charges, special diet etc. and certainly have suffered unbearable pain, shock and sufferings. Therefore, in the interest of justice, reasonable figures are required to be awarded under these heads. Hence, this tribunal upon considering the evidence on record as well as the arguments of both the sides, awards **Rs.1,20,100/-** towards medical expenses, Rs.20,000/- towards actual loss for a period of two months, Rs.25,000/- towards pain, shock and suffering, Rs.25,000/-

under the head of special diet and transportation.

- (18) Now, it is well settled principle of law that the *just compensation* should be awarded to the victim. Now, considering the above noted facts and foregoing reasons and keeping in mind the concept of the 'just compensation', this Tribunal has inclined the following quantum :-

1	Future Loss of Income	Rs.3,14,160/-
2	Actual loss of Income.	Rs. 20,000/-
3	Pain, Shock and Suffering	Rs. 25,000/-
4	Medical Expenses.	Rs.1,20,100/-
5	Special Diet, Attendant and Transportation charges.	Rs. 25,000/-
<b>Total (Rupees Five Lakhs Four Thousand Two Hundred Sixty Only)</b>		<b>Rs.5,04,260/-</b>

### **INTEREST**

- (19) The applicant has prayed for interest at the rate of 18% per annum. Therefore, I have sought guidance from the judgment of Hon'ble Supreme Court in National Insurance Com. vs. Pranay Sethi (supra), wherein the Hon'ble Supreme Court has allowed the interest at the rate of 9% and hence, I hold that claimant is entitled to get 9%.
- (20) Based on the above discussion and observations, I accordingly give my findings for the Issue no.2 & Issue

no.3 as per the following final order as under:

**-:ORDER:-**

1. This petition is allowed against opponent Nos.1, 2, 3 and 4 with costs and interest. Petition qua opponent no.5, 6 and 7 stands dismissed.
2. Opponents no.1, 2, 3 and 4 are directed to pay a compensation of **Rs.5,04,260/- (Rupees Forty Seven Lakhs Seventeen Thousand Fifty Only)** to the applicant jointly and severally with costs and simple interest at the rate of 9% per annum from the date of filing of the petition till actual realization.
3. Opponents are hereby directed to deposit the above amount within 30 days from the date of award of this Tribunal.
4. The aforesaid opponents are directed to deposit the amount of compensation through RTGS / NEFT in Bank account details of Motor Accident Claims Tribunal, Banaskantha at Palanpur, as under:

Name of Bank	STATE BANK OF INDIA
Name of Account	MACT, DISTRICT COURT, PALANPUR
Bank Branch Name	OPP. OLD GANJ BAZAR, MAIN BRANCH, PALANPUR
Bank Account No.	40902081331
IFSC No.	SBIN0000443
Email Address	mact-palanpur@gujarat.gov.in

5. The applicant is directed to furnish her bank

particulars i.e. her bank account number along with branch name, IFS Code, Copy of Pan Card before the Registry and thereafter, Registry is directed to make disbursement of the amount of compensation accordingly.

5. After above deduction, **30%** share of amount be paid to the applicant by account payee cheque/NEFT/RTGS after due verification and the remaining **70%** share of amount be deposited as F.D.R. in her in any Nationalized Bank as per her choice for a period of Five Years.
6. The opponents shall also bear costs of their petition as well as the petition of applicant.
7. The investment of Fixed Deposit shall carry the following terms and conditions:-
  - (A) Applicant is entitled to get interest on the Fixed Deposit receipt quarterly if she desires without permission of this Tribunal.
  - (B) No loan, overdraft or advance, known by any name or nomenclature shall be made available on the said FDR and the Bank shall not allow any encumbrance on the said Fixed Deposit.
  - (C) At the end of stipulated period of F.D., as aforesaid the Bank shall pay the total amount of F.D. with interest accrued

thereon, if any by A/c Payee Cheque to be drawn in the name of the applicant without permission of the Tribunal.

8. Yadi incorporating this Order to accompany the cheque shall be furnished to the Bank and a copy thereof also be furnished to the applicant.
9. Opponents have to follow direction given by the Hon'ble High Court of Gujarat in case of Hansa Gauri Prafulchandra Ladhani reported in 2007 ACJ 1897 regarding income tax liability.
10. Award is to be drawn accordingly.

Signed & pronounced today, on this 10th day of March, 2026.

Place : Palanpur  
Date : 10/03/2026

**(Piyushkumar A. Patel)**  
*Chairman*  
M.A.C. Tribunal(Auxi.)  
Palanpur, Dist.Banaskantha.  
Code-GJ00803