

GJBK010035372023



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Received On: 01-11-2023

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Decided On: 24-03-2026

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**BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL
(MAIN), B.K. DISTRICT AT PALANPUR.**

MACP No.336/2023

- 1) Jagdishji Jawanji Thakor,
Age-30 years, Occu. Service,
R/o Jagtapura, Tal. Danta,
Dist. Banaskantha.

... Claimant

Versus

1. Valimahmmad Jamalbhai Umatiya,
Age - 50 years, Occu.
R/o Punjpur, Tal. Danta, Dist.B.K.
(Owner of Tanker No.GJ-08-Z-2826)
2. Magma HDI General Ins.Co.Ltd.
S-1, 2nd Floor, Sigma Oasis,
Nr. H.D.F.C.Bank, Nr.Rajkamal
Petrol Pump, Mehsana-384001.
(Insurer of Tanker No.GJ-08-Z-2826)
3. Lilaji Kunvarji Parmar, Age - 49,
Occu. Agriculture, R/o Mahudi
(Gadh), Tal. Danta, Dist.B.K.
(Owner of Car No.GJ-08-CM-2502)
4. Reliance General Ins.Co.Ltd.
Radhe House, 2nd Floor, Opp. Classic
Empire, Nr. Rajkamal Petrol Pump,
Mehsana - 384002.
(Insurer of Car No.GJ-08-CM-2502) **...Opponents**

Appearance:

Mr. P.N. Vaghela, Ld. Advocate for Claimant.

Mr.A.N.Shera, Ld.Advocate for opponent No.1.

Mr. N.M.Joshi, Ld. Advocate for Opponent No.2.
Ex- Parte order passed against Opponent No.3.
Mr. B.A.Raval, Ld. Advocate for Opponent No.4.

Claim for Rs.2,50,000/- u/s.164 of M.V.Act.

JUDGMENT

[1] The petitioner has filed the present claim petition u/s. 164 of M.V.Act seeking compensation to the tune of Rs.2,50,000 from the opponents on account of injuries sustained in an accident that took place on 25.05.2023 at the time and place specified in para 7 of the petition involving Tanker No.GJ-08-Z-2826, which was being driven by the driver of opponent No.1, which was also of the ownership of opponent No.1 and which, according to the claim petition, were duly insured by opponent No.2, the insurance company, and therefore, it is urged that the opponents No.1 and 2 be held jointly and severally liable to pay the amount of compensation so required to be awarded herein. Owner and insurance of the Car No.GJ-8-CM-2502, which the claimant was driving, have also been joined as opponents No.3 and 4.

[2] It is the case of the petitioner that he has sustained permanent disabling nature of injuries on account of the accident, and therefore, is required to be properly compensated. It is also the case of the petitioner that the petitioner was aged about 30 years of age and was serving in the Dairy and was earning Rs.25,000/- per month.

[3] The factual matrix leading to the present petition is required to be underlined as follows:

On 25.05.2023 claimant was driving Car No.GJ-8-CM-2502 and going towards Palanpur for taking medicine and at that time he was driving the said car slowly and correct side of the road. It is also case that when he tried to overtake one Tanker No.GJ-08-Z-2826, at that time the driver of the said tanker suddenly applied breaks. Hence, the car dashed behind the tanker and turned turtle. In the said accident the claimant had suffered serious injuries. It is also stated that the accident taken place due to the sole negligence on part of driver of tanker involved in the accident.

It is further stated that on account thereof the applicant had suffered serious injuries and hemorrhage and he had taken treatment in the hospital as indoor patient from 25.05.2023 to 27.05.2023. The medical papers issued by the said Hospital are on the record of the proceedings. The applicant, according to the petition, has gone through grave trauma and has suffered grave pain, shock and suffering on account of the injuries sustained in the accident, and furthermore the applicant has been deprived of his usual source of income during the time she was disabled and bedridden on account of the injuries sustained. It is further claimed that the permanent disability sustained by him has reduced future scope of income and prospects of the present applicant, and therefore, the applicant is required to be suitably compensated, and more particularly to the extent sought for in the present petition.

[4] The opponents are duly served. The opponent No.3 though duly served has not remained present to contest the claim petition. Hence, the petition is proceeded Ex-parte against the

opponent No.3. The opponent No.1 though appeared through his advocate, but has not filed reply of this claim petition.

[5] The opponent No.2, is the insurance company of Tanker No.GJ-08-Z-2826, and is duly served and has, in fact, appeared on the record of the proceedings and has contested the petition by filing written statement which is on the record of the proceedings at Ex-19. The opponent insurance company has taken up all available defences and has, generally speaking, denied any liability to pay any amount much less the amount of compensation claimed. It is submitted that the driver of the vehicle was not holding valid driving licence. It is specifically stated that there was no negligence on the part of the driver of the Tanker, but the alleged accident occurred due to the sole negligence on part of petitioner driver of the car No.GJ-8-CM-2502 and the complaint is also lodged against the driver of the car. The age and income of the deceased is also denied by this opponent. It is also stated that there is breach of policy conditions. Hence, It is submitted that the opponent No.2 is not liable to pay compensation. The opponent has, generally speaking, sought for a dismissal and rejection of the present application.

[6] The opponent No.4, is the insurance company of car No.GJ-08-CM-2502, and is duly served and has, in fact, appeared on the record of the proceedings and has contested the petition by filing written statement which is on the record of the proceedings at Ex-23. The opponent insurance company has taken up all available defences and has, generally speaking, denied any liability to pay any amount much less the amount of compensation claimed. It is submitted that the driver of the

vehicle was not holding valid driving licence. It is specifically stated that there was no negligence on the part of the petitioner, but the alleged accident occurred due to the sole negligence on part of driver of the Tanker. The age and income of the deceased is also denied by this opponent. It is also stated that there is breach of policy conditions as the said car is used for hire or reward for carrying passengers. Hence, It is submitted that the opponent No.4 is not liable to pay compensation. The opponent has, generally speaking, sought for a dismissal and rejection of the present application.

[7] It is in the background of such rival pleadings that this Tribunal was pleased to frame the issues as follows at Ex.21:

- (i) Whether the applicant proves that he sustained injuries due to rash and negligent driving on part of drivers of the vehicles involved in this accident?
- (ii) Whether the applicant is entitled to get claim compensation? If yes, from whom and what amount?
- (iii) What order and award?

[8] My findings on each of the issues are as hereinafter follows:

- (i) In the affirmative. Accident occurred due to the involvement of both the vehicles namely Tanker No.GJ-08-Z-2826 and car No.GJ-8-CM-2502.
- (ii) In the affirmative and as per the amount quantified.
- (iii) As per final judgment and award.

[9] The petitioner has relied both on oral and documentary evidence in an effort to establish his entitlement to the claim. It would be necessary, at the outset, and before ascribing my reasons for arriving at the findings above, to refer to the documentary evidence which are in the shape of :-

| Sr. No. | Description | Exh. |
|---------|--|------|
| 1 | Complaint | 36 |
| 2 | Panchnama of place of accident | 37 |
| 3 | Injury certificate | 38 |
| 4 | R.C.Book of tanker No.GJ-08-Z-2826 | 39 |
| 5 | R.C.Book of Car No.GJ-08-CM-2502 | 40 |
| 6 | Insurance policy of Car No.GJ-08-CM-2502 | 41 |
| 7 | Disability certificate | 34 |

[10] The oral evidence on the record of the proceedings are as under:

| Sr. No. | Description | Exh. |
|---------|---|------|
| 1 | PW1, Jagdishji Javanji Thakor, Petitioner | 26 |
| 2 | PW2, Dr.Vijay Ratilal Sheth, Neurosurgeon | 33 |

[11] This set of evidence is required to be considered to decide the fate of the present petition.

REASONS

Issue No.1:

[12] I have heard learned counsels for both the sides and perused the record. The issue-wise findings of this Tribunal are as under:

[13] It is settled position of law that, under Section 164 of the Motor Vehicles Act which is subsequently amended from 163-A and the amount was fixed of Rs.5,00,000 in case of death of the

victim and upto Rs.2,50,000/- for the injuries sustained in the accident. Hence, petitioner are not bound to prove negligence on the part of tortfeasor. It is not for the wrongdoer to excuse himself by proving that accident was inevitable and due to no negligence of his part, but claimant himself was negligent or wrongdoer. However, this claim petition has been filed by the claimants under Section 164 of Motor Vehicles Act for getting compensation for the injuries suffered by the petitioner in the accident. As per the present settled law laid down by the Honourable Supreme Court in the case of **United India Insurance Co. Ltd. V/s Sunil Kumar and another reported in 2018 ACJ 1 (SC)**, the petition filed under Section 163-A is required to be decided on principle of “No Fault Liability” and in said petition, the Tribunal need not to consider and determine any dispute regarding rash and negligent driving of any of the drivers of the vehicles involved in the accident including applicant.

[14] However, the defence of the Insurance Company which is available as per the provision of Section 147 and 149 of Motor Vehicles Act is/are still available to Insurance Company and if there is breach of the material terms and conditions of the Insurance Policy, then Insurance Company can avoid its liability. Keeping this settled view now, it is required to determine this petition.

[15] The same issue was framed and decided on the point of negligence in this accident by this Tribunal in Claim Petition No.335/2023, which is being disposed of on dated 30.06.2025. The parties of present petition were also the parties in those petitions. In the case of **United India Insurance Co. Ltd. v. Laljibhai Hamirbhai**, 2007(1) GLR 633, Hon’ble Gujarat High

Court has discussed at length the principle of *res judicata* in deciding the issue of negligence in claim petitions. In para 15 of that decision Hon'ble High Court has held that 'Merely because the applicant in both the cases were different, it does not mean that the bar of *res judicata* cannot operate since the controversy was between the two defendants who were parties to both the proceedings and that controversy was required to be decided to give relief to the applicants of both the cases. In the case of *Ishwardas v. State of Madhya Pradesh*, AIR 1979 SC 551, the Apex Court has held that in order to sustain the plea of *res judicata* it is not necessary that all the parties to the litigations must be common. All that is necessary is that the issue should be between the same parties or between the parties under whom they or any of them claimed'.

[16] In view of the above decision of Hon'ble Gujarat High Court, for deciding Issue No.1 the judgment in Claim Petition No.335/2023 operates as '*res judicata*'. Therefore, as has been decided in MACP No.335/2023, I hold that accident occurred due to the involvement of both the vehicles namely Tanker No.GJ-08-Z-2826 car No.GJ-8-CM-2502. Further due to the said accident the petitioner had suffered injuries. It is in the background of such facts and circumstances that I am required to answer the issue No.1 in the affirmative, which I hereby do so.

Issue No.2:

[17] As a natural consequence, and since having found issue No.1 in favour of the petitioner and in the affirmative, it necessarily follows that the petitioner is entitled to the compensation as claimed. The only question that now remains is

computing and assessing the quantum of compensation which is required to be awarded herein. Each of the learned advocates for the contesting parties have made submissions in this regard, which I propose to deal with as hereinafter follows, and after considering the rival submissions, I propose to make a specific award under each head as hereinafter follows:

[18] At the outset, the age of the petitioner is pleaded as 30 years in the petition. In his Aadhar card date of birth of petitioner is mentioned as 01.06.1989. The accident taken place on 25.05.2023. Hence, it can be said that the petitioner was 34 years of age. With regard to the income the petitioner has stated that he was earning Rs.25,000/- per month by doing service in Dairy and also by doing agriculture and animal husbandry work.

[19] In this regard it is required to be noted that if we peruse the new amendment by the the Ministry of Road Transport and Highways, vide Notification dated 22nd May,2018, amended the Second Schedule of Section 163A of the Motor Vehicles Act, 1988, as under:

1. (a) Fatal Accidents: Compensation payable in case of Death shall be Five Lakh Rupees.

(b) Accidents resulting in permanent disability: Compensation payable shall be = [Rs. 5,00,000/- X percentage disability as per Schedule I of the Employee's Compensation Act,1923 (8 of 1923)]: Provided that the minimum compensation in case of permanent disability of any kind shall not be less than fifty thousand rupees.

(c) Accidents resulting in minor injury: A fixed compensation of twenty five thousand rupees shall be payable:"

[20] Further Section 164 states that if a person is seriously hurt, or dies due to an accident caused by a motor vehicle, the

owner or insurer of that vehicle has to pay compensation. The compensation amount is 5 lakh rupees in case of death, or 2.5 lakh rupees in case of grievous hurt. The compensation can be paid to the victim or the victim's legal successors (usually the family members of the victim). It also appears that Section 164 - Compensation on the basis of "No Fault Liability" - Section 164 prescribes "No Fault Liability" compensation of Rs.5,00,000/- in death cases and Rs.2,50,000/- in grievous hurt cases without any need to prove the negligence of the driver.

[21] Here in the present case also the claimant has suffered Head injury which can be seen from the injury certificate produced on record. The petitioner has also produced disability certificate of Dr. Vijay R. Sheth at Ex.34 who had assessed disability of the petitioner at 10.6% body as a whole. The petitioner has examined Dr. Vijay R. Sheth at Ex.33 who has admitted that he had given the disability certificate to the petitioner and examined for the disability certificate and assessed the disability as per the certificate. In his cross examination this witness has admitted that he did not see any other medical certificate prior to issuing the disability. But he had seen only discharge card in which he had suffered injury of 6 x 2 cm. CLW and he has not suffered any internal injury as per C.T. Scan. He has admitted that he had not made any CT Scan report. He has denied that he had assessed false disability. Thus, it appears from the disability certificate and deposition of this doctor that the petitioner had suffered head injury and disability which is 10.6% for body as a whole. The petitioner has not produced any medical bills on record. Therefore, in view of the aforesaid amendment in this case the applicant is entitled to get total amount of

compensation of Rs.2,50,000/- including the medical bills if any along with interest.

Liability:

[22] In appears from the vehicle particular at mark 5/4 that the Tanker No.GJ-08-Z-2826 was in the ownership of opponent No.1 and in the said vehicle particular it is mentioned that the said vehicle was duly insured with the opponent No.2 Magma Ins. Co. for the period from 30.12.2022 to 29.12.2023, covering the date of accident 25.05.2023. Likewise, insurance policy at Ex.41 issued by the opponent No.4 shows that it is issued in the name of the opponent No.3 for the Car No.GJ-08-CM-2502 and the said car was insured with opponent No.4 for the period from 18.08.2022 to 17.08.2023, covering the date of accident 25.05.2023. In this case the petitioner himself was driving the car and looking to the insurance policy no additional premium for owner or driver is taken in the policy. Hence, in this case the opponent No.4 is not liable to pay any amount of compensation to the claimant. Hence, the opponent No.4 is exonerated. At the same time, as this petition is filed u/s.164 of M.V.Act and the petitioner is not third party and he himself was also negligent for the accident. Further this petition is filed u/s.164 of M.V.Act, therefore, 50% amount is required to be paid by the opponent No.3 owner of the Car No.GJ-08-CM-2502. So, in this case the opponents No.1 and 2 are jointly and severally liable to pay Rs.1,25,000/- to the petitioner and likewise the opponent No.3 is liable to pay Rs.1,25,000/- to the petitioner. As mentioned above the opponent No.4 is exonerated. Hence, issue No.2 is answered accordingly.

Rate of Interest

[23] Learned Counsel for the Petitioners submitted that petitioners be awarded interest at the rate of 24% on the awarded amount. On the other hand Learned Counsel for the opponents submitted that the petitioners may be awarded the interest at the rate of 6% on the awarded amount. I have considered the contentions and perused the records. It shows that the accident took place in the year 2023. In the year 2023, the rate of interest in FDR was on a higher side. In *Abati Bezbaruah v. Dy. Director General, Geological Survey of India and Another* [(2003) 3 SCC 148], the Hon'ble Supreme Court has held that -

“The rate of interest must be just and reasonable depending upon the facts and circumstances of each case and taking all relevant factors including inflation, change of economy, policy being adopted by Reserve Bank of India from time to time, how long the case is pending, permanent injuries suffered by the victim, enormity of suffering loss of future income, loss of enjoyment of life etc., into consideration.”

[24] Thus, having regard to the facts and circumstances of the case, in the light of the judgment of *Abati Bezbaruah (supra)*, it would be just and proper to award the simple interest at the rate of 9% p.a. Accordingly, the petitioner shall be entitled to get simple interest at the rate of 9% p.a. on the awarded amount of claim from the date of filing of claim petition till payment of awarded amount.

Tax to be Deducted at Source

[25] In *Hansaguri Prafulchandra Ladhani v. Oriental Insurance Company Limited*, reported as 2007 ACJ 1897, the Division Bench of Hon'ble Gujarat High Court has laid down the

guidelines regarding the Tax Deducted at Source. In this judgment, the Hon'ble High Court directed that if amount of interest calculated on the awarded amount does not exceeds Rs. 50,000 per year per petitioner, then no TDS shall be deducted by the Insurance Company/ Respondents at the time of depositing the awarded amount along with interest in the Tribunal, therefore, in view of this Judgment, the Respondents/ Insurance company is hereby directed not to deduct the TDS if the amount of interest does not exceeds Rs.50,000/- per year per petitioner.

[26] In the event, and in light of my findings above, following final order is passed:

FINAL ORDER

- (i) The petition is hereby allowed.
- (ii) The petitioner is entitled to get compensation of Rs.2,50,000/- (Rupees Two Lacs Fifty Thousand Only), less the compensation paid u/s 140 of the MV Act, if any, within 30 days with interest at the rate of 9% per annum from the date of petition till the date of payment to the petitioner.
- (iii) The Opponents No.1 and 2 do jointly and severally pay an amount of Rs.1,25,000/- (Rupees One Lac Twenty five Thousand Only), less the compensation paid u/s 140 of the MV Act, if any, within 30 days with interest at the rate of 9% per annum from the date of petition till the date of payment to the petitioner.

- (iv) The Opponent No.3 do pay an amount of Rs.1,25,000/- (Rupees One Lac Twenty five Thousand Only), less the compensation paid u/s 140 of the MV Act, if any, within 30 days with interest at the rate of 9% per annum from the date of petition till the date of payment to the petitioner.
- (v) The opponent No.4 is exonerated.
- (vi) The respondents do pay costs of the claimant and also bear that of their own.
- (vii) It is further directed that compensation amount shall be deposited directly into the bank account maintained by this Tribunal by RTGS or NEFT mode within 30 days in compliance with the directions given by Hon'ble Supreme Court in Bajaj Alliance General Insurance Co. v. Union of India, Writ Petition (s) (Civil) No. 534 of 2020 as well as directions given by Hon'ble High Court of Madras in Civil Misc. Appeal No.428 of 2016 decided on 11th March, 2016 titled as Divisional Manager, The Oriental Insurance Co. Ltd. v. Rajesh & Ors.
- (viii) The aforesaid opponent/s is/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 GANZ
BAZAR, MAIN BRANCH, PALANPUR**

Bank Account No.: **40902081331**

Bank IFSC Code No.: **SBIN0000443**

Email address: **mact-palanpur@
gujarat.gov.in**

- (ix) On such realization of the above said amount, after deducting deficit Court fees if any, **30%** amount shall be paid in cash by RTGS or NEFT mode to the petitioner, while remaining **70%** amount be deposited in his name in Fixed Deposit Receipt for a period of 5 years in any nationalized bank with liberty to withdraw interest periodically by the applicant. The bank shall not allow any loan or advances against the above said Fixed Deposit Receipt without previous permission of this Tribunal.
- (x) Award be drawn accordingly.

Pronounced in the open Tribunal today this **24th day of March, 2026.**

PALANPUR.

Date:24/03/2026

(Shubhada Krishnakant Baxi)

Chairman

M.A.C. TRIBUNAL (MAIN)
B.K.DISTRICT, PALANPUR.

(Code : GJ00377)

SNJ