


GJBK010025002022 	DATE OF INSTITUTION	12/10/2022		
	DATE OF REGISTRATION	12/10/2022		
	DATE OF JUDGMENT	26/11/2022		
	DURATION	DAYS	MONTHS	YEARS
		14	01	02

IN THE TRIBUNAL OF MOTOR ACCIDENT CLAIMS

(5th AUXI.) AT:-PALANPUR, DIST.B.K.

M.A.C.P.No.:-228/2022

Ex. :-

Claimant.

Arvindbhai Popatlal Panchal,
Age: 36 years, Occ.Nothing,
R/o.Vishwakarma Society, Dhanera, Tal.Dhanera,
Dist.Banaskantha.

Versus

Opponents.

- 1.** Kamlesh Kuransibhai Aal,
Age: Adult, Occ.Business,
R/o.Baiwada, Tal.Deesa, Dist.Banaskantha.
(Owner of M/cycle No.GJ-08-BR-1919)
- 2.** Chola S.S. Gen. Ins. Co. Ltd.,
Beside Income Tax Office, Abu Highway,
Palanpur, Tal.Palanpur, Dist.Banaskantha.
(Ins.Com. of M/cycle No.GJ-08-BR-1919)

Subject :- Claim petition filed u/s.166 of Motor Vehicles Act, 1988, to get compensation of Rs.87,24,000/-.

Appearance :-

Ld. Adv. for the claimant	Mr.B.S.Solanki
Ld. Adv. for the opponent no.1	Mr.C.G.Thakkar
Ld. Adv. for the opponent no.2	Mr.B.A.Raval

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

- (1) At the first instance, the applicant has filed his claim petition under Section 164 of the Motor Vehicles Act, seeking compensation from the opponents on account of accidental injuries caused to him in the alleged accident occurred on 03/07/2022. Later on, the applicant has made an application vide Exh.14 and get his claim petition converted into Section 166 of the Motor Vehicle Act from Section 164 of the Motor Vehicles Act.
- (2) The brief facts, giving rise to this application are that on 03/07/2022, the applicant was going to drop his cousin brother by riding motorcycle no.GJ-08-BR-7218. When he was riding his motorcycle on Ramun to Ramsan Road at that time, a motorcycle bearing no.GJ-08-BR-1919, driven rashly and negligently came from the opposite side and violently collided with the motorcycle of the applicant. Hence, the accident had occurred and in the said accident, applicant has sustained severe bodily injuries all over the body. This gave rise to the filing of present claim petition.
- (3) It appears from the record that opponents are duly served with notices.
Learned Adv. Mr.C.G.Thakkar for the opponent no.1 has appeared and filed his written statement vide Exh.28, wherein, he opposed the claim petition by denying each and every averments of the claim petition.

Learned Advocate Mr.B.A.Raval for the opponent no.2 has appeared and filed its written vide Exh.30 and opposed the claim petition by denying each and every averments of the claim petition. It denies date, time, place of offence, involvement of vehicles etc. It also denies age, income, injuries, expenses, etc. Learned Advocate has contended that driver of the vehicle was not holding any valid driving license at the time of accident. Learned Advocate has further taken other defence as per the written statement and prayed to reject the claim petition against it with costs.

- (4) During the course of hearing, the parties have led the following evidence to prove and disprove the contents of the claim petition, which are as under :-

<u>Sr. No.</u>	<u>Oral Evidence</u>	<u>Exh.</u>
1	Affidavit -cum-examination-in-chief of applicant.	17
2	Affidavit of Solanki Narpatsinh Ratansinh, Manger.	18
3	Deposition of Vipulkumar Prabhudas Patel - witness of opponent No.2	38

<u>Sr. No.</u>	<u>Documents</u>	<u>Exh.</u>
1	Salary Certificate of applicant.	19
2	Registration certificate of the Khusbu Welding Shop in the Dhanera Nagarpalika.	20
3	Copy of GST Certificate.	21
4	Medical Bills.	22

5	Certified copy of FIR.	23
6	Certified copy of panchanama of place of offence.	24
7	Copy of RC.	25

- (5) During the course of hearing, the following issues are framed by my learned Predecessor to decide the present claim petition, which are at Exh.13;
- (1) Whether the applicant prove that he sustained injuries due to rash and negligent driving of driver of vehicle involved in accident ?
 - (2) Whether the applicant is entitled to get compensation ? If yes, who is responsible to pay compensation and to what extent ?
 - (3) What order ?
- (6) My findings of the above noted issues are as under :-
- (1) In affirmative.
 - (2) As per final order.
 - (3) As per final order.
- (7) Heard, learned Advocate for the applicant and perused the oral as well as the documentary evidence produced on record.

REASONS

Issue No.1 :

- (8) Perusing the complaint, panchanama of place of accident, charge-sheet and medical papers produced on record, facts such as date, time, place, involvement of vehicle, accidental injuries etc. become undisputed.

- (9) Now, so far as the point of negligence is concerned. Applicant vide Exh.17 has filed his affidavit cum examination-in-chief, wherein he reiterated the facts as per the claim petition. He has also been cross-examined by the learned Advocate Mr.B.A.Raval, for opponent no.2, wherein he has admitted that the alleged road is single road. He has further denied that the both the vehicles collided head to head with each other. He has further admitted that there is no panchanama of motorcycle on record. He has further admitted that he was not holding any DL at the time of accident. He has denied that at the time of accident, he was learning "how to drive motorcycle". He has further denied that he sustained injuries after falling from the motorcycle.
- (10) 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 FIR, it is lodged by the applicant himself against the driver of motorcycle having no.GJ-08-BR-1919. Looking to the charge-sheet produced on record,

it reveals that the police after investigation, has filed the charge-sheet against the driver of motorcycle having no.GJ-08-BR-1919. Looking to the panchnama of place of offence, neither vehicle involved in the offence is present on the spot of accident and there is also no remarkable items present on the spot of accident. It is relevant to observe that looking to the manner of accident emerging out from the evidence on record, it seems that both the vehicles collided head to head with each other. It is also relevant to observe that even though the road is single and less wider, the same is sufficient to pass two motorcycles simultaneously. It is relevant to observe that except the applicant, there is no one before this court to state the manner of accident and therefore it is not appropriate to disbelieve the suggestions brought on by the applicant. It is noteworthy to mention here that applicant has stated in his claim petition that he was driving his motorcycle at the time of accident. After considering the overall evidence on record, this tribunal is of the opinion that the accident had occurred due to the negligent driving of drivers of both the motorcycles involved in the accident. Since road is wide enough to pass through two two-wheelers simultaneously, it is the duty of the driver of both the vehicles to drive their vehicles safely. Accordingly, inter se liability of the driver of motorcycle no.GJ-08-BR-1919 to that of driver of motorcycle no.GJ-08-BR-7218 is fixed in the ratio 70%-30% respectively. Thus, this tribunal decides Issue No.1 in

"AFFIRMATIVE".**Issue No.2:-**

(11) In the case on hand, it is established that the accident had taken place due to the negligent driving of drivers of both the motorcycles involved in the accident and due to the said accident, claimant had suffered serious injuries. Therefore, he is entitled to get compensation as per the provision of M.V.Act.

(12) **LIABILITY**

Now so far the **question of liability** is concerned. As discussed above, the driver of opponent's motorcycle having no.GJ-08-BR-1919 was responsible for causing accident to the extent of 70% and remaining 30% negligence is attributed by the applicant himself as he was the driver the other motorcycle involved in the accident.

Learned Adv. Mr.Raval for the opponent no.2 has argued that the driver of the motorcycle no.GJ-08-BR-1919 was not holding any valid and effective driving license to drive the motorcycle, which is a clear breach of mandatory provisions of the insurance policy. Hence, this opponent is not liable to pay any compensation to the applicant. To support its defence, the opponent has also examined one Mr.Vipulkumar Prabhudas Patel, Motor Vehicle Inspector, Palanpur RTO.

In this regard, it is relevant to observe that the

insurance company has not examined the driver of the motorcycle no.GJ-08-BR-1919 to verify the fact that whether he was holding the driving license at the time of accident or not. He has also not examined the owner of the said motorcycle having no.GJ-08-BR-1919. The insurance company has examined one Vipulkumar Patel, Motor Vehicle Inspector, who has stated that Palanpur RTO has not issued any such driving license in the name of Mukeshji Parkhanji Anecha, who was the driver of the motorcycle no.GJ-08-BR-1919. The said information was provided to the insurance company by the witness based on the online data available in the RTO. It is relevant to observe that the driving license can be availed from anywhere in India, where, the person reside usually. To verify the fact of driving license, the insurance company ought to have examined the driver of the motorcycle no.GJ-08-BR-1919. Merely examining the aforesaid witness is not sufficient to prove the defence that the driver of motorcycle no.GJ-08-BR-1919 was not holding any driving license at the time of accident. Looking to the whole deposition of the witness, it cannot be safely hold that the driver of the motorcycle no.GJ-08-BR-1919 was not holding any driving license at the time of accident. Hence, the defence of learned Adv. Mr.Raval for not having valid driving licence of the driver of motorcycle no.GJ-08-BR-1919 was not holding any driving license at the time of accident does not hold any ground and cannot be believed.

Perusing the record, it reveals that the opponent nos.1 and 2 are the owner and insurance company of the motorcycle no.GJ-08-BR-1919 involved in the accident. The opponent-insurance company has not disputed the fact that insurance policy was not in force at the time of accident. **Hence, opponent nos.1 and 2 are jointly and severally liable to pay compensation to the applicant to the extent of 70%.**

- (13) 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 and resultant thereof disability.
- (14) Learned Advocate for the applicant has submitted that applicant was doing fabrication work at Khusbu Welding Shop, Dhanera and earning Rs.30,000/- per month. To support his averments, he has examined the manager of the said shop and also adduced the salary certificate at Exh.19.

Per contra, learned Advocate for the opponent no.2 has argued that applicant has not produced any offer letter, i-card, attendance register, bank account statements, any extract of ledger of salary etc to prove his job and salary. In these situations, notional income of applicant may be considered.

Perusing the record, it reveals that applicant has produced the salary certificate at Exh.19, wherein, it is mentioned that applicant was doing fabrication work at Khusbu Welding Works. He was drawing salary of Rs.30,000/- per month therefrom. The applicant has also examined the Manager of Khusbu Welding Works vide Exh.18, who deposed the facts in support of the salary certificate issued by the said firm. Learned Adv. Mr.Raval has also cross-examined him wherein he has stated that it is true that income tax register of the firm does not show the salary of Rs.30,000/- paid to the applicant. He has stated that the salary of the applicant was paid in cash without securing any receipt from him. He has further stated that applicant was working at his firm since last 10 years. Therefore, considering the facts and circumstances, this tribunal arrives at the conclusion that the applicant was a skilled labourer having knowledge of fabrication and he may be earning a good amount though failed to prove the same by leading cogent evidence, this tribunal deems it fit to consider Rs.18,000/- as the monthly income of the applicant.

- (15) 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

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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."

(15.1) 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.

- (15.2) 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%.
- (16) 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. Applicant has not produced any evidence to prove his age. However, looking to the medical papers produced on record, the age of applicant in these documents is mentioned as 35 years. At the same time, the applicant in his claim petition himself has mentioned his age as 36 years. In these aforesaid scenario, this tribunal deems it fit consider the age of the applicant as 36 years at the time of accident. As the applicant was below 40 years old at the time of accident and 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.25,200/- [i.e.Rs.18,000 (income) + Rs.7200 (40%prospective)]**.

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- (17) This applicant has produced the disability certificate issued by Dr.Amrut A. Patel, M.S.(Ortho), wherein the doctor has assessed the permanent disability of the applicant at 80% pertaining to the affected limb. Learned Adv. Mr.Raval for the opponent no.2 has admitted the disability of the applicant to the extent of 40% pertaining to the whole body. Therefore, considering the overall evidence on record, this tribunal deems it fit to consider 40% permanent disability of the applicant body as a whole.
- (18) As discussed above, applicant was 36 years old 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 36 years (approx) at the time of accident, I deem it fit to give **multiplier of 15**.
- (19) Therefore, **future loss of income** would come to **(Rs.25,200/- x 12 x 40 % x 15) = Rs.18,14,400/-**
- (20) Now, so far as other pecuniary and non-pecuniary losses are concerned, the applicant has produced the medical bills worth Rs.28,000/-(approx). However, the applicant has not produced any bills regarding his transportation charges, attendance charges, special diets etc. But it is established on record that the claimant had sustained grievous injuries in right lower limb due to which the doctor amputated the right lower

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limb of the applicant and he has taken treatment in Private Hospital, Dhanera, Civil Hospital, Ahmedabad and other hospitals towards his accidental injuries. So, this can be believed that he has remained bed-ridden for longer period of time. Medical papers of the applicant also show that applicant has taken treatment as inpatient for longer period of time. Therefore, it is obvious that he must incur expenses towards transportation, attendances charges, special diet etc. and certainly have suffered unbearable pain, shock and sufferings. Looking to the nature of injury sustained by injured applicant, it cannot be denied that injured applicant has remained away from his avocation for considerable period of time and suffered financial loss. 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.28,000/- towards medical expenses, Rs.72,000/- towards actual loss for a period of four month as he suffered grievous injuries including the amputation of right lower limb and, Rs.40,000/- towards pain, shock and suffering, Rs.20,000/- under the head of special diet, Rs.20,000/- towards transportation considering the raised inflation and Rs.20,000/- towards attendance**, which are just and proper.

(21) Now, it is well settled principle of law that the *just*

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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.18,14,400/-
2	Actual Loss of Income	Rs. 72,000/-
3	Pain, Shock and Suffering	Rs. 40,000/-
4	Medical Bills.	Rs. 28,000/-
5	Transportation Charges.	Rs. 20,000/-
6	Attendance Charges.	Rs. 20,000/-
7	Special Diet etc.	Rs. 20,000/-
Total (Rupees Twenty Lakhs Fourteen Thousand Four Hundred Only)		Rs.20,14,400/-

INTEREST

(22) Claimant 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%.

(23) Based on the above discussion and observations, I accordingly give my findings for the Issue no.2, and for Issue No.3, I pass the following final order as under:

-:ORDER:-

1. This petition is partly allowed with costs and

interest against opponent Nos.1 and 2.

2. Opponents no.1 and 2 are directed to pay a compensation of **Rs.14,10,080/- (Rupees Fourteen Lakhs Ten Thousand Eighty 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. The aforesaid figure is equivalent to 70% of the award amount of Rs.20,14,400/-.
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 his bank particulars i.e.his 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.

6. After the amount is deposited, requisite court fees, if any, and/or interim compensation received earlier, is ordered to be deducted first from the awarded amount.
7. After above deduction, **30%** share of applicant be paid by account payee cheque/NEFT/RTGS after due verification and the remaining **70%** share of applicant be deposited as F.D.R. in his name in any Nationalized Bank as per his choice for a period of Five Years.
8. The opponents shall also bear costs of its petition as well as the petition of applicant.
9. 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 he 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.

10. Yadi incorporating this Order to accompany the cheque shall be furnished to the Bank and a copy thereof also be furnished to the applicant.
11. 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.
12. Award is to be drawn accordingly.

Signed & pronounced today, **on this 26th day of November, 2024.**

Place : Palanpur Date : 26/11/2024	(Piyushkumar A. Patel) Chairman M.A.C. Tribunal(Auxi.) Palanpur, Dist.Banaskantha. Code-GJ00803
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