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BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL
(MAIN), BHAVNAGAR

M.A.C.P. No.289 / 2023

Exh.39

- Matroja Surendrasinh Pratapsinh**
competent officer of
Gujarat State Road Transport Corporation,
Bhavnagar Division
Aged : Adult, Occupation : Service,
Address : Panwadi, Bhavnagar.

.. .. APPLICANT

vs.

EICHER GOOD TRUCK NO. GJ – 17 – UU – 6848 :

DRIVER :

- Ajaykumar Bhogilal Rathwa**
Aged : 26 years, Occu. : Driving,
Address : Rathwa Faliyu, Dinkva,
Halol, Panchmahal.

OWNER :

- Keyurkumar Kalpeshbhai Shah**
Aged : Adult, Occu. : Transport,
Address : 31, Pooja Society,
Kanjari Road, Halol, Panchmahal.

INSURANCE COMPANY :

3. **HDFC Ergo General Insurance Co. Ltd.**
Address : 201, Second Floor,
Corporate House, Waghawadi Road,
Bhavnagar.

.. .. **OPPONENTS**

Appearance :

Mr. U.V.Gohil, Learned Advocate for the applicant

Ex – parte against the opponent nos.1 and 2

Mr. N.H.Zala, Learned Advocate for the opponent no.3

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

1. The present claim petition has been filed by the claimant who is a competent officer of the Gujarat State Road Transport Corporation under Section 166 of the Motor Vesicles Act, 1988 (hereinafter referred as 'the M.V. Act'), for the award of compensation of Rs.1,80,000/- due to the damages caused to the **S.T.Bus bearing registration no. GJ – 18 – Z – 4331** in a vehicular accident.
2. The brief facts of the accident are that, on 29.04.2023, S.T. bus bearing registration No. GJ – 18 – Z – 4331, belonging to Palitana Depot under Bhavnagar Division, departed from Kwant at approximately 16:00 hours, and while proceeding towards Palitana after picking up passengers from Chhota Udepur, at around 18:00 hours, the said bus reached near a narrow culvert between Jetpur Pavi and Moti Rasli village. At

that time, an Eicher goods Truck bearing registration No. GJ – 17 - UU – 6848, coming from the opposite direction, was being driven at excessive speed and in a rash and negligent manner by its driver, due to which it violently collided into the front driver's side of the S.T. bus. As a consequence of the said impact, the S.T. bus broke through the culvert wall and crashed into a tree, sustaining extensive damage to its front portion, driver's side body panels, windshield, silencer, radiator and diesel tank. On account of the aforesaid damage sustained to its bus, the applicant, GSRTC, has preferred the present claim petition seeking compensation of Rs.1,80,000/- from the opponents.

3. The opponent Nos.1 and 2, though duly served with the notice of these proceedings, have failed to appear before this Tribunal and have not filed their written statement. Accordingly, by order dated 28.02.2024, the matter has been directed to proceed ex parte against the said opponents.
4. Opponent No. 3, HDFC Ergo General Insurance Co. Ltd., filed its written statement vide Exh.16 admitting that Truck bearing registration no. GJ – 17 - UU – 6848 was insured in the name of Keyurkumar Kalpeshbhai Shah under Goods Carrying Comprehensive policy valid from 01.08.2022 to 31.08.2023, subject to its terms and conditions. While admitting the factum of insurance, the Opponent No. 3 denied all other material allegations and raised several defenses to contest its liability. It was contended that the driver of Truck bearing registration no. GJ – 17 - UU – 6848 did not possess a valid driving license on

the date of accident, and that the fitness certificate and permit of the said truck were also not valid and effective on the relevant date, thereby disentitling the applicant from claiming compensation against it. It was further contended that the bus driver was equally negligent in driving the bus at high speed and thus contributorily responsible for the accident. The Opponent No. 3 also denied that the repair cost of the bus amounted to Rs.1,80,000/- and disputed the alleged daily and monthly income of the bus. Additionally, it raised a contention under Section 170 of the M.V. Act alleging collusion between the applicant and the owner of the truck, and sought permission to contest the claim on all available grounds. It further prayed that interest, if any, be awarded at 6% or less, and ultimately prayed for dismissal of the claim with costs.

5. On behalf of the parties, the following oral as well as documentary evidence is produced.

:: ORAL EVIDENCE ::

Exh. No.	Particulars
24	Affidavit of the competent officer of the claimant

:: DOCUMENTARY EVIDENCE ::

Exh. No.	Particulars
26	Identity Card of the Divisional Manager
27	Copy of the FIR
28	Copy of the panchnama of the scene of occurrence
29	Copy of the policy particulars of the

	offending vehicle Truck involved in the accident
30	Copy of the driving license of the driver of the offending vehicle Truck involved in the accident
31	Copy of the R.C.Book of the Truck involved in the accident
32	Copy of the T – 5 report
33	Copy of the authority given to the applicant to depose in the claim petition
34	Copy of the costing bill
35	Accident investigation report
36	Copy of the R.C.Book of the S.T.Bus involved in the accident

6. For the just determination of the claim, the following issues were framed to be decided :

- (1) Whether the applicant proves that the S.T.Bus got extensively damaged due to the rash and negligent driving on part of the driver of the offending vehicle Truck involved in this accident ?
- (2) Whether the applicant proves that it is entitled to get compensation ? If yes, what amount and from whom ?
- (3) What award ?

7. My findings to the above Issues, for the reasons given below, are as under:-

- (1) In affirmative. As per final order.

- (2) Partly in affirmative. As per final order.
- (3) As per final order.

-: REASONS :-

ISSUE NO.1 :

8. Heard the Learned Advocates for the parties and perused the record.
9. Insofar as the aspect of negligence is concerned, the competent officer of GSRTC has deposed at Exh. 24 that on 29.04.2023, the S.T. bus bearing registration No. GJ -18 - Z - 4331 of Palitana Depot had departed from Kwant at approximately 16:00 hours and, after picking up passengers from Chhota Udepur, was proceeding towards Palitana. At around 18:00 hours, when the bus reached near a narrow culvert between Jetpur Pavi and Moti Rasli village, one Eicher goods Truck bearing registration No. GJ - 17 - UU – 6848, coming from the opposite direction and being driven at excessive speed and in a rash and negligent manner by its driver, violently collided into the front driver's side of the S.T. bus. As a result of the said impact, the S.T. bus broke through the culvert wall and crashed into a tree, sustaining extensive damage to its front portion, driver's side body panels, windshield, silencer, radiator and diesel tank, rendering the bus unfit to proceed further. The Corporation has therefore claimed a sum of Rs. 1,80,000/- towards compensation for the loss sustained due to the damages caused to the said S.T. bus.

- 9.1 The Learned Advocate for the opponent no.3 tried to extract from the claimant that there was also negligence on part of the driver of the S.T.Bus to some extent for causing the accident, but the said fact has been categorically denied by the claimant and she has specifically stated that the accident occurred due to sole negligence on part of the driver of the Truck involved in the accident.
10. While deciding the point of negligence, it has to be borne in mind that the negligence is required to be proved in claim petition u/s 166 of the Act only on the touchstone of the preponderance of probability and not beyond doubt. Above referred ratio is laid down by Hon'ble Apex Court in the cases of **Bimla Devi v/s H.R.T.C., reported in AIR 2009 SC 2819 and Parmeshwari Devi v/s Amir Chand, reported in 2011 (11) SCC 635.**
11. I have perused the FIR (Exh.27) which is laid against the opponent no.1 who was driving the Eicher goods Truck bearing registration No. GJ - 17 - UU – 6848 and the same is not challenged by the opponent no.1 before any forum alleging that same is false and fabricated complaint. Bare perusal of the complaint depicts the fact that there was gross negligence on part of the opponent no.1 who was driving the Truck involved in the accident. Moreover, the opponent nos.1 and 2 have chosen to not remain present before this Tribunal in the present proceedings, and therefore, adverse inference is required to be drawn against them.

11.1 The truck bearing registration No. GJ – 17 - UU - 6848 being one of the vehicles involved in the accident, it was the duty of Opponent No. 1 to ply his vehicle with utmost care and caution, to maintain a safe distance from other vehicles on the road, and to drive at a moderate and reasonable speed. The opponents have failed to lead any rebuttal evidence to demonstrate that the driver of the S.T. bus was in any manner negligent in the driving of his vehicle at the relevant time. It is a well-settled cardinal principle of law that the party who asserts that an accident occurred in a particular manner bears the burden of proving the same. In the present case, the applicant has successfully discharged that burden by proving, through cogent and consistent evidence, the case as pleaded in the claim petition and as deposed in the examination-in-chief of its witness. Accordingly, it is established that the accident in question occurred solely on account of the rash and negligent driving of Opponent No. 1, the driver of the offending truck.

11.2 Considering the above referred facts and circumstances of the case, and in absence of any rebuttal evidence led by the opponents to demonstrate that the driver of the S.T. bus was also negligent in any manner, I hold that the accident in question occurred solely on account of the rash and negligent driving of Opponent No.1, who was driving the Eicher goods Truck bearing registration No. GJ – 17 - UU - 6848 at the relevant time, and that the driver of the S.T. bus bearing registration No. GJ – 18 - Z - 4331 was not at all negligent in causing the said accident. Further, looking to the material placed on record for consideration, it transpires that

the S.T. bus sustained extensive damage in the said accident. Therefore, I decide Issue No.1 accordingly.

ISSUE NO.2 :

12. To substantiate the claim for damages, the Petitioner Corporation has examined **Kavitaben Malaybhai Bhatt, Division Traffic Officer (DTO)**, at **Exh.24**. In her examination-in-chief, she has categorically deposed that the S.T. Bus (Registration No. **GJ-18-Z-4331**) of Palitana Depot sustained extensive structural and mechanical damages in the accident. She further stated that the Corporation suffered a dual loss— firstly, the direct cost of repairs, and secondly, the loss of operational revenue as the bus remained grounded for approximately **669 hours**. The witness has produced the Cost Certificate from the Central Workshop (**Exh. 34**) and the Accident Investigation Report (**Exh.35**) to justify the claim of **Rs.1,80,000/-**. She emphasized that the accident caused a reduction in the future resale value of the vehicle and a loss of reputation among passengers, impacting the Corporation's overall revenue.

12.1 During cross-examination, however, the witness admitted that she was not an eyewitness to the occurrence and could not personally testify to the negligence of the drivers. Crucially, she admitted that while the bus was in the workshop, an alternative vehicle was deployed to serve the route, ensuring that the public transport service was not entirely suspended. She further conceded that the repair work was carried out

internally at the Corporation's own garage and that the "repair hours" cited included time lost due to a backlog of other vehicles awaiting maintenance. The witness also acknowledged the standard **10% annual depreciation** applicable to such commercial vehicles, which had not been factored into the initial claim.

13. Regarding documentary evidence, the **Scene Panchnama (Exh.28)** details the physical state of the bus, noting a shattered windshield, mangled driver-side body panels, and damage to the radiator and diesel tank. Notably, the panchnama, drawn by the police at the site, estimated the damage at **Rs.70,000/-**. While the Petitioner produced a Central Workshop Cost Bill (**Exh.34**) showing a much higher figure, the Corporation has failed to examine any independent technical expert, surveyor, or the mechanic who actually performed the repairs to authenticate the labor hours or the necessity of replacing specific spare parts. In the absence of such independent technical testimony, the internal assessment of the Corporation regarding "overhead charges" and "material costs" cannot be accepted as gospel truth, especially when it significantly exceeds the on-site assessment recorded in the panchnama.

14. Upon a holistic appreciation of the evidence, it is established that the Petitioner's bus did sustain substantial damage, necessitating its withdrawal from the fleet for repairs. While the claim of Rs.1,80,000/- appears on the higher side and lacks independent corroboration, the Tribunal cannot ignore the tangible financial burden of repairs and the loss of utility

during the idle period. Therefore, to meet the ends of justice, this Tribunal deems it fit to award Rs.70,000/- towards the actual physical damages sustained by the vehicle, as supported by the panchnama. Additionally, a sum of Rs.30,000/- is awarded towards the loss of income and non-operation of the bus during its repair period. *Accordingly, a total lumpsum compensation of Rs.1,00,000/- (Rupees One Lakh Only) is awarded to the Petitioner Corporation under all heads.*

LIABILITY :

15. As held hereinabove in Issue No.1, the accident occurred due to 100% negligence on part of the opponent no.1 and as there is no evidence in rebuttal by the Insurance Company with respect to breach of any terms and conditions of the policy, the opponent no.3 is liable to indemnify the owner of the offending vehicle Truck. However, insofar as the liability to compensate the claimants is concerned, the opponent nos.1 to 3 are hereby held jointly and severally liable to pay the aforesaid amount of compensation to the claimant.

INTEREST :

16. The claimant has prayed for interest at the rate of 18% per annum. At this juncture, I have sought guidance from the judgment of the Hon'ble Constitutional Bench of the Hon'ble Apex Court, in the case of **Pranay Sethi (supra)**, wherein, the Hon'ble Apex Court has allowed interest at the rate of 09% p.a. Hence, I hold that the claimant is entitled for interest at the rate of 09% p.a.

17. The Issue No.2, is, therefore, answered accordingly and the following final order is passed in the interest of justice.

:: ORDER ::

- (1) The present Motor Accident Claim Petition is partly allowed against the opponents.
- (2) The claimant is entitled to recover the amount of **Rs.1,00,000/- (Rupees One Lakh)** from the opponents, **jointly and severally** along with proportionate costs and interest at the rate of **9% (Nine Percentage) per annum** from the date of filing the claim petition, till the amount is realized.
- (3) The opponents are directed to deposit the awarded amount within 30 days.
- (4) Out of the amount deposited, deficit court fees, if any, and the amount of interim relief, be deducted first.
- (5) Since the present case is a case of damage, the whole amount shall be paid to the claimant by way of Account Payee cheque, after due verification.
- (6) Award shall be drawn accordingly.

Pronounced in open Tribunal today on this **13th** day of **March, 2026**.

Date : 13.03.2026.
Place : Bhavnagar.

(H. S. MULIA)
Chairman, M.A.C.T. (Main)
Bhavnagar.
UNIQUE ID CODE NO. GJ00915

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