

GJCU080014182021



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Duration :	Yrs Mts Dys
	04 - 10- 04
Exhibit :	

IN THE (SPECIAL) MOTOR ACCIDENT CLAIMS TRIBUNAL,
CHHOTAUDEPUR AT BODELI

M.A.C.P. No. 264 of 2021

Applicant:

Lilaben Ramubhai Vaghari,

Age :- 41 Years, Occupation :- NIL

Residing at :- Opp. Seva Sadan, Bhoivad,

Sankheda, Ta. Sankheda, District :- Chhotaudepur

VERSUS

Opponents:

1 Driver of Tempo No.GJ-06-YY-7852

Gopalbhai Mangabhai Vaghari,

R/O- Navi Nagari, Sankheda,

Ta. Sankheda, District :- Chhotaudepur

2 Driver of Motorcycle No.GJ-34-J-6019

Ramubhai Ishvarbhai Vaghari,

R/O- Opp. Seva Sadan, Bhoivad,

Sankheda, Ta. Sankheda, District :- Chhotaudepur

3 Owner of Motorcycle No.GJ-34-J-6019

Vishnubhai Fogatbhai Vaghari,

R/O- Opp. Ambali Faliya, Sankheda,

Ta. Sankheda, District :- Chhotaudepur

4 Insurance Co. Motorcycle No.GJ-34-J-6019

I.C.I.C.I. Lombard General Insurance Company Ltd.

Office at :- 3rd Floor, Land Mark Building

Race Course Circle, Alkapuri, Vadodara.

Appearance:

Ld. Advocate for the petitioner :- Mr. P. P. Parmar,
 Ld. Advocate for the Opponent No.1 :- Ex-parte
 Ld. Advocate for the Opponent No.2 & 3 :- Mr. M. M. Chavda
 Ld. Advocate for the opponent No.4 :- Mr. K. A. Patel

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

- 1) The claimant has filed this claim petition U/s 166 of the M.V. Act to claim the compensation of Rs.4,00,000/- from the opponents.

THE BRIEF FACTS OF THE CLAIM PETITIONS :-

- 2) That on dated 27/03/2021 at 9.30 in the morning, the petitioner was going towards his village Timba, and was sitting as a pillion rider and the rider of the motor cycle riding his motorcycle No.GJ-34-J-6019 in a very moderate speed and and when they were passing through the Handod-Bhatpur Road above minor Narmada Canal at that time, opponent No.1 came by driving his Tempo No.GJ-06-YY-7852 in excessive speed and in rash and negligent manner and overtake the motorcycle and take all of sudden a turn and dashed the motorcycle, as a resulting into the accident. Thus, due to the negligence of Opponent No.1, the said accident occurred, causing injuries to the petitioner. Thereafter, the petitioner was taken to the Referral Hospital, Sankheda for primary treatment and then-after referred to the Radha Surgical & Maternity Hospital, Alikherva, Bodeli. It is alleged that the accident occurred solely on account of rash and negligent driving of the Tempo No.GJ-06-YY-7852.
- 3) In this regard the complaint was lodged by opponent No.2 Ramubhai Ishvarbhai Vaghari in Sankheda Police Station, vide I. C.R. No. 11184009210156 under Section 279, 337, 338 of the Indian Penal Code and Section 177 & 184 of the Motor Vehicle Act against the opponent No.1 Gopalbhai Mangabhai Vaghari driver of Tempo No.GJ-06-YY-7852.

THE DEFENCE OF OPPONENT :-

- 4) The Notice issue to the opponent No.1 who is the driver of the Tempo No.GJ-06-YY-7852, which was served to the opponent No.1, but he does not appeared before the Tribunal in person or through his advocate. Hence, the order passed below Ex.1 to proceed ex-parte against the opponent No.1.
- 5) Notice issued to the Opponents No.2 & 3 which were served to the opponent No.2 & 3 and they were appeared before the Tribunal, the opponent No.2 & 3 have not filed any written statement and hence, his right to file reply was closed.
- 6) The Insurance Co. has appeared through its Ld. Advocate and filed its written statement at Ex.-20 and in its written statement they generally denied all the allegations and averments made by the claimant in his petition, as regard to accident, mode of accident, negligence on part of driver of motorcycle No.GJ-34-J-6019, injuries and disability to the claimant as mentioned in medical certificate, age, income of the applicant, occupation of applicant as well as liability to pay compensation etc. and ultimately prayed to dismiss the petition. It is further contended that the opponent No.2 was not holding any valid driving license to drive motorcycle No.GJ-34-J-6019 at the time of accident. It is further contended that the FIR was given by Ramubhai Ishvarbhai Vaghari the rider of Motorcycle No.GJ-34-J-6019 and the charge sheet was filed against another person i.e. Naginbhai Rajubhai Vaghari, who was the driver of motorcycle No.GJ-34-J-6019, so this is the fit case of driver implant. It is further submitted that the opponent No.2 was not holding any valid driving license to drive motorcycle No. GJ-34-J-6019 the vehicle at the time of accident. In view of the above the Insurance Co. contended that they are not liable to pay any compensation and the claimants are not entitled to get any

compensation from opponent No.4. Ultimately, it is prayed that this petition may be dismissed.

7) THE EVIDENCE PRODUCED BY THE CLAIMANTS :-

8) Oral Evidence :-

1	Affidavit of the petitioner Lilaben Ramubhai Vaghari	Exh.23
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6.2 Documentary Evidence

Sr. No.	Particular	Exhibit/ Mark
1	Copy of the F.I.R.	25/1
2	Copy of Panchnama of place of accident	25/2
3	Refer-memo of the petitioner	25/3
4	Copy of injury certificate of issued by Radha Surgical and Maternity Hospital	25/4
5	Copy of R.C. Book of Motorcycle No. GJ-34-J-6019	25/5
6	Copy of insurance policy of Motorcycle No. GJ-34-J-6019	25/6
7	Original Medical bills of Rs. 51,736.00	25/7
8	Disability Certificate	25/8
9	Copy of the Aadhar Card of petitioner	25/9
10	Copy of the driving license of opponent No.2	25/10

9) THE EVIDENCE OF THE OPPONENT No.4 ::

Oral Evidence :-

1	Deposition of Mayurbhai Somabhai Sutariya	Exh.32
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Documentary Evidence

Sr. No.	Particular	Exhibit/ Mark
1	Copy of F.I.R.	19/1
2	Copy of final report under Sec. 173 of Cr.P.C.	19/2
3	Copy of form SI No.1 (details of accused)	19/3
4	Copy of statement of Rajubhai Vaghari before the police	31/1
5	Copy of Medico-legal Certificate of Naginbhai Rajubhai Vaghari	31/1
6	Copy of suchipatra	36/1
7	Copy of complaint	36/2
8	Copy of FIR	36/3
9	Case papers and statements	36/4

- 10) **Closing Pursis ::** The Learned Advocate for the petitioner has submitted closing pursis vide at Exhibit:-34/1 as well as the Learned Advocate for the opponent No.4 had filed closing Pursis at Ex-38.
- 11) **Arguments :-** The Ld. Counsel for the petitioner has filed written submissions vide Ex. 41. The Ld. Advocate for the opponent No.4 has argued orally and also submitted a written argument at Ex.39. He further argued that the driver of the alleged motorcycle has no valid driving license to drive the motorcycle, hence, there is a breach of terms and conditions of the policy, hence, insurance company is not liable to pay compensation.

ISSUES ::

- 12) From the pleadings of the parties, the contentions raised and matter on record the following issues were framed.
1. Whether the petitioner proves that she sustained injuries due to rashness and negligence on the part of driver of the

vehicle involved ?

2. Whether the applicant is entitled to compensation ? If yes?
what amount and from whom?
3. What Order and Award ?

13) My findings on the above issues are as under :-

1. In the affirmative.
2. In the affirmative.
3. As per final order.

:: REASONS ::-

ISSUE NO.1 :-

14) INVOLVEMENT OF VEHICLE, NEGLIGENCE AND INJURY DUE TO THE ACCIDENT::

- 15)** Looking to the Form of issues No.1 in the petition, it appears that the claimant has to prove that, he has sustained injury in the accident on account of rashness or negligence in driving on the part of driver of the Tempo bearing registration No.GJ-06-YY-7852 as well as driver of the motorcycle bearing registration No.GJ-34-J-6019.

- 16)** While Ld. Advocate for the opponent No.4 on the basis of the evidence produced on record and submitted that the accident occurred due to sole negligence on the part of the driver of the motorcycle bearing registration No.GJ-34-J-6019. It is further submitted that the opponent no.2 in her statement before the police stated that Naginbhai Rajubhai Vaghari who is the family, members of the petitioner was in fact driving the motorcycle and was not holding valid driving licence at a time of accident and that the complainant in his complaint has falsely mentioned the name of the opponent No.1 as he was having personal grudges against him and

has changed the name of the rider of the motor cycle at a time of accident. It is therefore submitted by the Opponent No.4 that considering the false allegation and false FIR, the insurance Company i.e opponent no. 4 is exonerated.

- 17) Both the learned Advocates largely relied upon the evidence produced on record. The learned Advocate for the claimant relied upon the oral evidence of the claimant, the complaint, panchanama, etc., whereas the learned Advocate for opponent No. 4 submitted that a false and fabricated FIR had been lodged and that the driver had been falsely implicated. It was further contended that the rider of the motorcycle was negligent in driving the motorcycle and, therefore, the insurance company cannot be held liable for the negligence of the rider of the motorcycle.
- 18) **Involvement of vehicles and negligence:-** The injured Lilaben Ramubhai Vaghari has produced her oral evidence at Ex.23 on the record and supported all the facts as mentioned in the claim petition. In her cross-examination, the injured-claimant has admitted the fact that she was a pillion rider on the motorcycle and the said motorcycle dashed with the tempo. She further admitted the fact that the rider of the motorcycle drove his motorcycle behind the tempo at full speed and dashed from the back side of the tempo. She further admitted the fact that the complaint was lodged by her husband. She further admitted the fact that her husband was driving a motorcycle at the time of the accident.
- 19) The witness in her cross examination admitted that she was discharged after receiving medical treatment and that no further treatment is presently ongoing. She further admitted that the disability certificate produced on record was obtained from a doctor who had not treated her. She stated that at the time of the accident, she was engaged in selling vegetables, but at present she is not doing any work. She also admitted that immediately after the

accident, she was taken to the hospital for treatment. The witness further admitted that she has not produced any documentary evidence to establish her income from the said business at the time of the accident. The witness denied the suggestion that she is deposing falsely with a view to obtain compensation.

- 20) **FIR :-** Claimant has produced the True copy of FIR at Ex.-25/1, which was lodged by the was lodged by husband of the petitioner against the opponent No.1 herein, wherein it is mentioned that on 27/03/2021 at around 9.30 in the morning, the complainant and his wife Lilaben were going to village Timba on his brother-in-law's motorcycle bearing registration No.GJ-34-J-6019, were selling lemon orchards and he was riding a motorcycle and his wife Lilaben was sitting behind him and from Handod chokdi, a tempo came out from Handod at full speed from the bus stand of Piplia village. After overtaking his motorcycle, the driver of the Tempo Gopalbhai Maganbhai Vaghari drove his tempo at full speed and negligent manner and suddenly, without showing any kind of side signal, turned on the road going to Gunder on the left side of the canal, causing an accident to the complainant's wife Leelaben and causing a fracture in her left leg between the knee and ankle. The driver of the Tempo fled the spot leaving his tempo at the spot.
- 21) From the FIR it transpires that the FIR which was lodged by Ramubhai Ishwarbhai Vaghari contains two center allegations. First he is the rider of the motorcycle and second, the tempo driver Gopalbhai Mangabhai over took his motorcycle and then took a sudden left turn without signal, causing the accident. Both of these allegations have been conclusively established to be forged in view of the evidence placed on record.
- 22) It has come on record through the testimony of various witnesses including Ramubhai himself who has admitted before IO that he deliberately wrote his own name as driver in FIR because Naginbhai

had no license. This admission by the complainant himself who has lodged the FIR knowing that it contains false information. As regard the alleged collision with a tempo; the same is contradicted by the eye witnesses namely, Leelaben, Pradipbhai Narendrabhai Gosai as well as Sanjaybhai Askobhai and Hardikbhai, both the laborers who were sitting in the tempo Bearing No. GJ-06-YY-7852.

- 23) Since the FIR has been found to be false at the threshold as the same has been manipulated by the complainant Ramubhai Ishwarbhai and thus the allegation of negligence against the tempo driver (opponent No.1) devoid of its evidentiary value and can not be accepted as proof of negligence witnesses without independent corroboration.

Evidence of eyewitness:-

- 24) The IO during the trial has placed on record the statement of various witnesses who were eye witness to the incident and their statements were recorded before the IO during the course of investigation is relevant to decide the negligence and the same has be analysed by this Tribunal.
- 25) **Leelaben W/o Narendrabhai** :- The witness has stated before the police that she was present at the place of incident at a time of accident, a tempo came from Handod direction and was turning left towards Gunder Road near the canal. At the same time, a motorcycle came from Handod at full speed, suddenly applied brakes near the canal bridge, lost control and skidded approximately 30 feet, causing both persons to fall.
- 26) The statement of the witness is categorical and unambiguous wherein it is quite clear that the tempo did not collide with the motorcycle. The accident occurred because the motorcycle, proceeding at high speed, skidded on the canal bridge. The statement of the witness is direct evidence of the actual cause of the accident.

- 27) **Paradipbhai Naredrabhai Gosai** :-The witness stated that on 27/03/2021, at about 08:30 to 08:45 a.m., while he was present at his shop along with his mother, he witnessed a tempo coming from Handod and turning towards Gunder near the canal. At that time, a motorcycle carrying a male rider and a female pillion rider approached the canal bridge at high speed from behind the tempo. The rider lost control of the motorcycle, causing it to slip and drag on the road for about 30 feet, resulting in injuries to the female pillion rider.
- 28) The witness stated that the tempo had not collided with the motorcycle and was proceeding on its side of the road. After the incident, the tempo driver stopped the vehicle and assisted the injured lady. Subsequently, two persons arrived on another motorcycle and attempted to assault the tempo driver, who fled from the spot to save himself. Thereafter, the injured lady was placed in the tempo and taken for medical treatment.
- 29) The witness categorically stated that the accident occurred solely due to the rash and negligent driving of the motorcycle rider, who lost control of the vehicle, and that the tempo driver was not responsible for the accident.
- 30) **Sanjaybhai Ashokbhai Ranaand & Hardikbhai Shanabhai Bariya**: Sanjaybhai and Hardikbhai were the two labourers who were travelling in the tempo with the opponent no 1 Gopalbhai on the date of incident. Both independently witnessed the accident and deposed that the tempo was parked on the left side of the road near the tea stall when the motorcycle came from behind at high speed, applied brakes suddenly on the canal bridge, skidded approximately 25 feet and fell. Both confirmed that the tempo did not collide with the motorcycle. While these two witnesses are associated with the tempo, their accounts are independently consistent with those of the

two wholly independent eyewitnesses (Leelaben and Pradipbhai), which significantly reinforces their reliability.

- 31) **Naginbhai Rajubhai Vagahri** :- As per the charge sheet it was Naginbhai Rajubhai Vaghari who was actually driving a motorcycle on 27/03/2021. The present driver appeared before the I.O. and stated before him that he proceeded towards Timba village along with his sister Leelaben on a Splendor motorcycle bearing registration No. GJ-34-J-6019 when at around 10:00 a.m. when they reached near the Narmada Minor Canal on the outskirts of Piplia village, a tempo travelling ahead of them stopped near a roadside tea stall after crossing the canal. Upon suddenly applying brakes, the motorcycle skidded and dragged for about 30 feet on the road. As a result of the accident, Leelaben sustained fractures to her left leg, while he suffered minor injuries on his right foot. The tempo driver was identified as Gopalbhai Mangabhai Vaghri of Sankheda. After learning of the incident, the deponent's brother-in-law Ramubhai and younger brother Lalabhai arrived at the spot. Owing to a prior dispute, Ramubhai chased and assaulted Gopalbhai with a stick after catching him in a nearby field.
- 32) He further clarified that the accident occurred because he applied sudden brakes and lost control of the motorcycle. He stated that although the complaint mentioned that Ramubhai was driving the motorcycle, in fact, he himself was riding it, and the said statement in the complaint was incorrect as he did not possess a driving licence.
- 33) The statement of the actual driver who actually stated that it was him who was driving the motorcycle and suddenly applied the break and tempo who was parked at a side of the road had no role to play in the accident. This is the most direct and cogent evidence of the actual cause of the accident.

- 34) **Ramubhai Ishwarbhai Vaghari** :- He is the complainant who lodged the FIR against opponent No.1 Gopalbhai Mangabhai Vaghari. The witness stated before the IO that on the day of incident his brother-in-law, Naginbhai Rajubhai Vaghari, along with his wife Leelaben, proceeded to Timba village on a Splendor motorcycle bearing registration No. GJ-34-J-6019 to purchase lemons. At about 10:00 a.m., the deponent received information that the motorcycle had met with an accident near the Narmada Minor Canal on the outskirts of Piplia village, resulting in fractures to Leelaben's left leg.
- 35) Upon reaching the spot, the deponent found Gopalbhai along with two labourers and his tempo near the canal. Owing to a previous dispute arising out of Gopalbhai's alleged affair with the deponent's daughter, the deponent chased Gopalbhai with a stick taken from a nearby tea stall, along with his brothers-in-law Naginbhai and Lalabhai. Gopalbhai was caught in a nearby field, assaulted with the stick, and brought back towards the canal.
- 36) He further stated that the accident occurred because Naginbhai, who was riding the motorcycle, suddenly applied brakes, causing the motorcycle to skid and Leelaben to suffer injuries. He clarified that although the complaint mentioned that he himself was riding the motorcycle, in fact Naginbhai was the rider, the incorrect statement was made because Naginbhai did not possess a driving licence.
- 37) From the statement of the complainant it transpires that he lodged a false complaint against opponent No.1 owing to enmity with him and thus it was Naginbhai who was the actual driver of the motor cycle bearing No.GJ 34 J 6019 and not him.
- 38) **Panchanama** :- The claimant has produced the copy of the panchanama at Mark 25/02 , wherein it is clearly mentioned that the offending vehicles were not lying there. The road is 18 ft. wide and straight. Nothing else was found on the road. Further, the

applicant has produced a copy of the charge-sheet mark 19/02 , from which it transpires that the Naginbhai Rajubhai Vaghari has been charge-sheeted for the alleged vehicular accident by the police after due investigation.

- 39) Deposition of IO Mayurbhai Somabhai Sutariya, (Exh.32) and his cross examination :-** The insurance company has examined the IO who admitted that he had conducted the investigation of the alleged accident. He stated that the complainant, Ramubhai Ishwarbhai Vaghri, had lodged a complaint against Gopalbhai Mangabhai Vaghri, driver of tempo bearing registration No.GJ-06-YY-7852, alleging that on 27/3/2021, between 9:15 a.m. and 9:30 a.m., the said tempo was being driven rashly and negligently near the canal at Pipliya village and had suddenly turned towards the left side of the canal without giving any signal, thereby colliding with the motorcycle and causing injuries to Leelaben. The witness stated that after registration of the FIR, the investigation was handed over to him. He visited the place of occurrence, prepared the panchanama of the scene of offence, and recorded statements of witnesses.
- 40)** The witness further stated that during investigation it was revealed that although the complainant had stated in the FIR that he himself was riding a motorcycle bearing registration No.GJ-34-J-6019, in fact the motorcycle was being driven by his brother-in-law, Naginbhai Rajubhai Vaghri, while Leelaben was sitting as a pillion rider. It was further found that Naginbhai was driving the motorcycle at a high speed and in a negligent manner and, upon suddenly applying brakes near the standing tempo, the motorcycle slipped and the accident occurred. The witness admitted that during further interrogation, the complainant disclosed that he had falsely stated himself to be the rider because Naginbhai did not possess a valid driving licence. He further admitted that the original

complainant had deliberately mentioned the wrong name of the motorcycle rider in the complaint.

- 41) During cross-examination, the witness stated that he was presently serving in the Cyber Crime Branch, Ahmadabad, and had been working as an Investigating Officer since 2020. He admitted that no Test Identification Parade was conducted during the investigation. He further admitted that although legal action can be taken against a complainant for filing a false complaint, no such action was initiated in the present case despite the incorrect naming of the rider in the FIR.
- 42) The witness further admitted that the name of the accused surfaced only from the statements of two tempo labourers, namely Sanjaybhai Ashokbhai Rana and Hardikbhai Bariya, whereas the remaining witnesses had not disclosed the name of the accused. He also admitted that there existed prior enmity between the complainant's family and labourer Sanjaybhai Rana arising out of a love affair involving the daughter of the injured woman. The witness stated that he could not say whether, because of such enmity, the complainant's side had intentionally implicated the wrong person.
- 43) The witness further admitted that no M.L.C. Certificate or medical records were produced to show that accused Naginbhai Rajubhai Vaghri had sustained injuries in the alleged accident. He admitted that the medical certificate on record only referred to an old scar on the accused's right foot and treatment for an extra-cranial injury at a private hospital on 02/04/2021. He further admitted that although Leelaben had produced a certificate from Radhe Surgical Hospital, no medical documents relating to the accused were collected during investigation.
- 44) The witness also admitted that when the identity of an accused is disputed, signatures of witnesses are normally obtained on special

statements; however, in the present case, although such statements were recorded, signatures could not be obtained. He admitted that no hospital admission records of either the injured or the accused were collected and that the investigation did not verify whether the accused possessed a valid driving licence. He further admitted that Section 3/181 of the Motor Vehicles Act was not added in the final report.

- 45) The witness admitted that paragraph 3 of the inquiry report recorded that the complainant's brother-in-law had actually been driving the motorcycle, yet no inquiry was conducted to verify whether Naginbhai lacked a driving licence. He also admitted that paragraph 4 of the investigation report recorded that the complainant had intentionally mentioned the wrong name of the rider in the original complaint, but no legal action was taken against him for such false naming. The witness acknowledged that statements made by an accused before the police are not admissible in evidence before the Court. However, he denied the suggestion that the charge-sheet had been filed without sufficient evidence against the accused.
- 46) After careful scrutiny of the evidence which has been placed on record including the statement of the eye witnesses and the charge sheet, this Tribunal has no doubt that the claimant has completely failed to prove that the opponent No.1 (Tempo Driver of Tempo bearing registration No.GJ-06-YY-7852) caused the accident through rash and negligent driving.
- 47) In motor Accident claim petition, the standard of proof is preponderance of probabilities and even on this standard the claimant case does not merely fall short, it is affirmatively discredited. The F.I.R. which has been lodged by the complainant against the opponent No.1 has himself in his statement before the police, admitted the fact of falsely implicating opponent No.1. Not only this he even admits that he was not driving the motorcycle, but

in fact it was Naginbhai Rajubhai Vaghari who was driving the motorcycle at the time of accident. Further, the main driver of the motorcycle i.e. Naginbhai himself admitted that due to sudden accidental brake of the motorcycle it skid on the road due to excessive speed and because of which accident occurred. This conclusion is not based on a single piece of evidence, but it emerges from the unimpeachable testimony of the eye witnesses as well as the admission of the driver himself and the res gestate statement of the claimant and the absence of any physical sign of collusion in the panchanama.

- 48) In such a scenario when the claimant version is false and the actual cause of accident is established by independent witnesses, the law does not permit the Tribunal to hold the tempo driver responsible for negligence. The burden of proof lies on the claimant and that burden has not been discharged by her.
- 49) Furthermore, it has also brought on record that there was some enmity between the claimants family and the opponent No.1 which itself is a motive for lodging false FIR and false implication. It is apparent that implication of opponent No.1 is not by mistake but it is a deliberate attempt on the part of the complainant (opponent No.2) Ramubhai Ishvarbhai Vaghri, which is motivated by personal animosity.
- 50) Hence, this Tribunal is of the clear view that the accident occurred solely due to the negligent driving of the motorcycle rider, and opponent No.1 is not responsible for the accident.

Finding on negligence against opponent No.2:-

- 51) As per the evidence place on record, the complaint is lodged by the opponent No.2 Ramubhai Ishvarbhai Vaghri, who in the FIR has

stated that he was driving the motorcycle when opponent No.1 Gopalbhai Mangabhai Vaghri, who was driving the tempo in rash and negligent manner and dashed with the motorcycle, and thereby caused the accident.

- 52) However, this Tribunal has found as a matter of fact that Ramubhai was not on the motorcycle at the time of the accident. He was at Handod Chowkdi when the accident occurred and arrived at the spot later on a separate motorcycle after receiving information of the accident. He himself admitted he was not the driver. Since Ramubhai was not driving the motorcycle, he cannot be held liable for any act of negligent driving. But indeed as per the charge sheet and other evidence which has been brought on record before the Tribunal, the actual driver of the motorcycle bearing registration No. GJ-34-J-6019 was Naginbhai Rajubhai Vaghri, who while driving the motorcycle applied the break suddenly, causing the motorcycle to lose control and it skid and resulting in the claimant and the driver himself falling and sustained injuries, hence, it was Naginbhai Rajubhai Vaghri who was negligent in driving the motorcycle and causing the accident. But the most important part is that he has not been impleaded as an opponent in the petition for the reason best known to the claimant. However, his non impleadment does not defeat the claim of the claimant as an innocent third party pillion rider. Her right to compensation survives through the registered owner of the motorcycle (opponent No.3) who is vicariously liable for the act of the rider of the motorcycle.

- 53) Hence, issue No.1 is decided as per the discussion mentioned above.

ISSUES NO. 2

Quantum of compensation :-

- 54) This issue is in regard to the quantum of compensation and liability of the opponents to pay it, therefore, to decide this issue looking to

the entire record, including evidence produced on record, following thing emerges;

- 55) **Age, Multiplier & Income** :- To prove her age, the petitioner has produced Aadhar Card which is on record vide Mark 25/9, wherein her date of birth is mentioned as 01/01/1980 and the date of accident is 27/03/2021 and therefore, it can be said that the petitioner was of the age of 41 years, 02 months old at the time of accident thus, looking to the unchallenged evidence, it's become clear that the petitioner was **42 years old** at the time of accident, and as per the settled principles of law laid down by the **Hon'ble Supreme Court** in **2009 ACJ 1298** in the case of **Sarla Verma and Others – Appellants V/s. Delhi Transport Corporation and Another – Respondents**, for the age group of persons 41 to 45 years, a **multiplier of '14'** is applicable. It has been further stated by the petitioner in her affidavit as well as in the petition that she was earning Rs.9,500/- from selling foods and vegetables. Now, to show the monthly income, the petitioner has not produced any documentary evidence and even the petitioner has not examined any witness to prove her income and therefore, it can be said that the petitioner has no evidence to prove her income and therefore, Tribunal has to assess the income of the petitioner for the calculation of the compensation thus, as per the facts of the petitioner, she was selling foods and vegetables, the accident took place in the year 2021 and at the time of accident the petitioner was having the age of 42 years as well as the prevailing rate of minimum wages at the relevant time. Considering the oral as well as documentary evidence on record, as per the **Circular No.શ્ર.આ.૬/ટે-૨/૯૦૧ થી ૯૮૦/૨૦૨૦ તા.૧/૧૦/૨૦૨૦ Minimum wages in Gujarat w.e.f. 01-10-2020 to 31-03-2021**, the wages is fixed at Rs.8,429/- for unskilled worker. This Tribunal is of the

considered view that, it would be just and proper to assess monthly income of the deceased as **Rs.8,500/- per month (round off Rs.8429/-)** which comes to **Rs. 1,02,000/- per annum**.

- 56) **Permanent Disability :-** In the accident, petitioner sustained serious grievous injury and in this regard, she has produced Injury Certificate vide Mark 25/8. Furthermore, to prove the permanent disability, the petitioner has produced the Disability Certificate (**Mark-25/8**) issued by the Dr. Dilip Solanki at Jahanvi Orthopedic Hospital wherein total 38% disability of left lower limb is assessed and vide pursis at **Exhibit-27** both the claimant and the Opponent No.4 have agreed to consider the **disability to the tune of 19% as a body as whole** to determine the Future Economic. Therefore, this Tribunal assess the disability of **19%** for the body as a whole.
- 57) **Loss of Future Income :-** As, applicant has sustained a permanent disability of 19%, it can be said that this disability impacts the applicant's ability to perform every task, whether it is daily activities or business-related activities. The permanent disability affects the applicant's earning capacity and convenience, and it is causing an impediment to their ability to earn. Therefore, the present petitioner is entitled for compensation under the head of loss of Future Income. Thus, I discussed and determined above, the monthly income of petitioner at **Rs.8,500/-** (and permanent disability sustained by him at **19%**, she will be entitled to Rs.1,615/- per month and Rs.19,380/- per year, and considering the age of petitioner 42 years, and as such, the petitioner is entitled to get 14 multiplier. So, Rs.19,380/- X 14 = **Rs.2,71,320/-** towards the loss of future income. Thus, here the petitioner is entitled to get an amount of **Rs.2,71,320/-** towards the loss of future income which amount is just and reasonable.
- 58) **Pain, Shock and Sufferings and Loss of Amenities of Life :-** So far as compensation towards Pain, shock and suffering, it revealed

from the records that the petitioner sustained **19%** permanent disability, the petitioner has sustained fracture and also underwent surgery. Hence, it seems that the petitioner must have suffered pain from the moment she met with the accident till the period of healing, therefore, looking to the nature and gravity of injury, sustained by petitioner in road accident, petitioner is awarded **Rs.10,000/-** under the head of pain, shock and suffering which amount is just and reasonable.

- 59) Actual Loss of Income :-** So far as the compensation under the head of Actual loss of income is concerned, the petitioner has stated on affidavit that she was first taken to Referral Hospital, Sankheda and for further treatment, she was transferred to Radha Surgical & Maternity Hospital, Bodeli. She had sustained a fracture in her left leg, for which an iron rod was inserted, and she had also suffered a head injury, leading to her being kept in the ICU for a few days. Thus, she had taken treatments as an indoor patient. In support of her contention she has produced a medicolegal certificate of the hospital which is on record vide mark 25/4. In this regard nothing adverse has on record, therefore, the same cannot be dis-believed. Furthermore, her outdoor treatment continued for a considerable period of time and during this time she was unable to do her work and was not earning any income. Considering the fracture and injuries sustained by the petitioner, the petitioner might have taken at least '**Two month**' time to recover from the said injury and to start doing her normal activities and earning. So looking to the nature and gravity of injury, it would be suffice to meet with the end of justice, if the compensation under the head of actual loss of income for **Two** months is considered, and therefore, I award Rs.8,500/- X 2 = **Rs.17,000/-** on the head of Actual Loss of Income, and it would be just and proper.

- 60) **Medical Expenses:-**The petitioner has produced medical bills of Rs.51,736/- vide Mark-25/7. It is admitted fact that the petitioner has produced medical bills before this Tribunal worth of Rs.51,736/-. Therefore, this Tribunal is of the view that the medical expenses incurred by the claimant should be assessed at Rs.51,736/- and accordingly is given to the claimant under the head of medical expenses.
- 61) **Special Diet, Transportation and Attendance Charges -** Moreover, as the applicant must have been attended at least by one person during the treatment. He must have incurred some reasonable amount for special diets, transportation, attendant etc. So, looking to the nature of injury, it would be reasonable to award the amount of the nature of injury, it would be reasonable to award an amount of **Rs.10,000/-** to the applicant towards Special Diets, Transportation and Attendant charges etc. Hence, I award the said sum to the claimant.
- 62) Therefore the claimant is entitled to the following amounts by way of compensation.

Sr. No.	Heads	Compensation Amount
1	Loss of Future Income.	Rs. 2,71,320/-
2	Pain, Shock and Suffering.	Rs.10,000/-
3	Actual Loss of income	Rs.17,000/-
4	Medical expenses.	Rs.51,736/-
5	Special Diet, Attendant charges, Transportation.	Rs.10,000/-
Total.....		Rs.3,60,056/-

- 63) Thus, the Petitioner is entitled to get a sum of **Rs.3,60,056/- (Rupees Three Lakh Sixty Thousand Fifty Six only)** as compensation.

LIABILITY TO PAY THE COMPENSATION :-

- 64)** This is one of the most crucial aspects which is to be decided by this Tribunal in view of the given sets of facts and circumstances. It is a contended by Ld. Counsel for the opponent No.4 that the actual driver of the motorcycle, at the time of accident was Naginbhai Rajubhai Vaghri, who did not possess a valid driving license at the time of accident and thus, it constitute a fundamental breach of Section 3 and Section 181 of the MV Act.
- 65)** On going through the entire proceedings, following facts emerges with respect to the above aspects:-
- (i) Naginbhai Rajubhai Vaghri has himself admitted that he does not possess a valid driving license.
 - (ii) Even, the complainant has very categorically admitted the fact that it was Naginbhai who was driving the motorcycle having no valid driving license. No driving license of Naginbhai has been placed on record during the entire proceeding.
 - (iii) The driving licence of opponent No.2 Ramubhai has been placed on record by the claimant, but in fact he was not the actual driver.
 - (iv) It is established that the opponent No.2 was not having a driving license on the day of the accident.
- 66)** Thus, it is proved that Naginbhai was not having a driving licence at the time of accident, which is the most fundamental category of the breach of the insurance policy condition.
- 67)** Now, coming to the policy which has been placed on record by the claimant. On going through the said policy, it transpires that the policy is a Bundled Two Wheeler Policy (1 Year OD + 5 Year TP), issued by ICICI Lombard General Insurance Company Ltd. in the name of the registered owner Mr. Vaghari Vishnubhai Fogabhai (Opponent No.3). From the policy it also transpires that the Compulsory Owner Driver PA Cover (Rs.15 Lakh) is payable only

when the registered owner (Opponent No.3 Vishnubhai) was himself riding the motorcycle at the time of the accident. Since Vishnubhai was not riding the motorcycle on 27/03/2021, this cover does not apply and no amount is payable under this head. Further, Optional Unnamed Passenger PA has not been purchased. The Optional PA Cover for Unnamed Passenger has a premium of Rs.0.00 and since it was not purchased by the insured, hence, no unnamed passenger PA benefit is available to the claimant under this head.

- 68)** From the given set of the facts, which has been placed before this tribunal, it emerges that:
- (i) The actual driver was Naginbhai Rajubhai who had no driving license at the time of accident, and was in fact riding the motorcycle and whose negligence the present accident occurred. Driving the motorcycle without a valid driving licence is a fundamental breach of the Section 3 of the MV Act.
 - (ii) The registered owner i.e. opponent No.3 has entrusted the motorcycle to Naginbhai knowingly that Naginbhai has no driving licence.
 - (iii) The breach was deliberate and willful as proved by the fact that opponent No.2 has lodged the false FIR to conceal the Naginbhai role and the claimant admission during the cross examination that her husband was riding the motorcycle. The deliberate concealment is itself conclusive proof that the licence breach was known to the insured.
- 69)** In this specific fact i.e. complete absence of licence, deliberate concealment and falsification of FIR, this Tribunal holds that the insurer i.e opponent no 4 is entitled to exoneration from liability.
- 70)** In **New India Assurance Co. Ltd., vs. Prabhulal 007 INSC 1210**, the Hon'ble Supreme Court meticulously analysed the provisions of the Motor Vehicles Act, 1988, particularly focusing on definitions

and requirements related to driving licenses for different vehicle categories. The court emphasized that:

- (i) Under Section 2(47), a "transport vehicle" includes goods carriages used for public service, necessitating specific licensing.
- (ii) Section 3(1) mandates that individuals must hold a valid driving license endorsed for the vehicle category they intend to drive.

The Central Motor Vehicles Rules, 1989, under Rule 16, stipulate that endorsements are necessary for driving transport vehicles.

- 71) Applying these provisions, the court concluded that Ram Narain's LMV licence was without the requisite endorsement for transport vehicles rendered him unauthorized to drive the Tata 709. Consequently, the Insurance Company rightfully denied the compensation claim.
- 72) Applying the above principle of law the facts of the present case, this court is of the view that the insurer is not liable to pay the compensation to the claimant and hence, **opponent No.4 is exonerated from the liability to pay compensation.**
- 73) Further, from the facts, it emerged that opponent No.3 Vishnubhai Fogatbhai Vaghri, who is the registered owner of the motorcycle No.GJ-34-J-6019 is liable to pay entire compensation on the following grounds :
First, that he is the registered owner and vicariously liable for the negligence use of his motorcycle by Naginbhai Rajubhai Vaghri, to whom he entrusted the motorcycle.
- 74) *Secondly*, he entrusted the motorcycle to Naginbhai, despite knowing the fact that he has no driving licence and thereby opponent No.3 has himself committed the act of negligence.
- 75) Hence, in view of the above the entire compensation amount be recovered from opponent No.3 (the registered owner) who is liable to pay compensation to the petitioner.

ADMISSIBLE RATE OF INTEREST :-

- 76) Looking at the circumstances of the case as well bank rates for the interest, I do believe that if interest is awarded at the rate of 7% it will be proper and just.

COURT FEES :-

- 77) The claim petition was filed by the applicants in forma paupers under Order 33 Rule 1 of the Civil Procedure Code and while the petitioner has succeeded in his case, and hence, Court Fee is required to be deducted under Order 33 Rule 10 of the Civil Procedure Code. The office is directed to deduct applicable Courts Fees accordingly.

INVESTMENT & DISBURSEMENT OF AMOUNT::

- 78) The Tribunal has taken into the consideration the guidelines and direction issued by Hon'ble Supreme Court in various decisions and Looking to the facts and circumstances of the case, status of the claimant, his age, etc. necessary order for investment and disbursement of compensation amount be made as per final order.

CONCLUSION / ORDER:-

- 79) In view of the foregoing discussion, I have decided Issues No.1 & 2 are in affirmative and accordingly. Hence, pass the following final order:-

ORDER

1. The claim petition Under Section 166 of the Motor Vehicles Act is hereby **partly allowed** with proportionate costs.
2. The petitioner do recover **Rs.3,60,056/- (Rupees Three Lakh Sixty Thousand Fifty Six only) from the Opponent No.3**, together with interest at the rate of **7% p.a.** from the date of the petition till realization of the amount along with proportionate costs of the petition.

3. The **Opponent No.3** is hereby directed to deposit in the office of this Tribunal the above amount of award, after deducting the amount of interim compensation, if any, paid u/s.140 of M.V. Act, within one month from the date of this order.
4. On depositing of the above amount of award by the Respondents in this Tribunal, the deficit amount of Court Fee Stamp, if any, on the awarded amount be deducted first and thereafter, the remaining amount, 40% of the amount be deposited in the name of the Petitioner, in any nationalized bank of the choice of the petitioner for the period of 6 years and the remaining 60% be paid to the Petitioner by account payee cheque on proper identification.
5. The Petitioner shall be entitled to receive periodical interest on the Fixed Deposits, but shall not be entitled to raise loan or advance without the prior permission of this Tribunal.
6. The Claimant is directed to submit following details within one week from today:
 - 1 Name of the claimant(s)/victim(s) with address.
 - 2 Name of the Bank and Branch IFSC Code, Account No(s)..... of the claimant(s)/victim(s).
 - 3 The first page of the bank pass-book, which will compulsorily contain the photograph of the claimant (s) /victim(s), duly attested by the Bank concerned, should be made available.
 - 4 Wherever the claimant(s)/victim(s) are impleaded as respondents, before the claims tribunal, their account details, as above, will have to be furnished.
7. The insurance companies and transport corporations and such other entities shall deposit the amount as directed in circular dated 27.12.2021 in **Account Name :-Motor Accident Claims Tribunal, Bodeli, Account No.:-02070100032788,**

**Bank Name :- Bank of Baroda, Branch :-Bajar Branch,
IFSC Code :-BARB0BODELI, MICR Code :-391012081**

and on such deposits being made, the insurance companies and transport corporations and such other entities shall submit a letter to the Registry of Addl. District Court/ Motor Accident Claims Tribunal (Aux.) enclosing a copy of the said bank advice, in prescribed format as above, as per which the deposit was made to the bank account of the Claims Tribunal, to enable the Claims Tribunal to keep tab on the deposits made and the MACPs for which they were made, which is a fundamental need for a smooth implementation. The Payment advice for remittance of compensation is as under:

**PAYMENT ADVICE FOR REMITTANCE OF
COMPENSATION From:**

..... Bank

To:

..... Court

We confirm remittance of compensation as follows on instructions of (insurance company / transport corporation):

1. MACP Number
2. On the file of (Claims Tribunal Name)
3. Place
4. Date of award
5. Amount Deposited
6. Income Tax Deduction at Source, if any Unique Transaction Reference (UTR) No.

8. The Insurance Companies, Transport Corporations and such other entities making such deposit, shall also send a copy of the payment advice in the aforesaid Clause to the Claim Tribunal concerned and serve a copy of the same on the claimant or his counsel as the case may be.
9. Insofar as tax deduction at source is concerned, Form 16-A of the Income Tax Act should be provided to the claimant/victim

on whose behalf the deduction has been made so as to enable him to seek refund of tax deducted.

10. Decree be drawn accordingly.

Signed and Pronounced in the open court today on this 19th day of May, 2026.

Date: 19.05.2026

Place: Bodeli

V N Tadvī, Steno.

(SAGAR PREM SHANKAR)
SPECIAL MACT (AUX.) JUDGE,
CHHOTAUDEPUR AT BODELI
UNIQUE ID CODE NO.GJ01601