



M. A. C. PETITION NO.48/2022	
FILED ON	12-10-2022
REGISTERED ON	12-10-2022
DECIDED ON	24-03-2026
DURATION	DYS - MTS - YRS
	12 - 05 - 03

**BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL  
(AUXI) OF DAHOD, AT LIMKHEDA**

**MOTOR ACCIDENT CLAIM PETITION NO.48/2022**

**EXH.45**

**SHAKUNTLABEN ARJUNBHAI PASAYA,  
AGED – 21 YEARS,  
OCCUPATION – LABOUR WORK,  
RESIDENT OF NANA PUVALA,  
BEDATFALIYU, TAL.DEVGADH-  
BARIYA, DIST.DAHOD.**

**.....CLAIMANT**

**VERSUS**

**DRIVER, OWNER & INSURER OF SWIFT CAR NO.GJ-06-MD-4685**

- 1. SHAKIL AMIRUDDIN SHAIKH,  
AGED – ADULT,  
OCCUPATION – DRIVER,  
RESIDENT OF 7, SCHOOL QUARTER,  
KARLIBAUGH, VADODARA,  
DIST.VADODARA.**

**MACP NO.48/2022-J**

2. **SURESH KANIYALAL KHATRI,**  
AGE – ADULT,  
OCCUPATION – OWNER,  
RESIDENT OF NARAYANDHAM  
DUPLEX, NR. PATEL PARK,  
VARASIYA ROAD, VADODARA.  
DIST.VADODARA.
3. **BAJAJ ALLIANZ GENERAL  
INSURANCE.**  
INSURER  
HAVING OFFICE AT 6, UMESH  
DARSHAN COMPLEX, DAHOD  
ROAD, GODHRA.

.....OPPONENTS

**SUBJECT :- PETITION FILED UNDER SECTION 166  
OF THE M. V. ACT (AMENDED), 1988 TO  
RECOVER RS.5,00,000/- AS COMPENSATION  
FROM THE OPPONENTS.**

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**MS. A.T.DADI**  
LEARNED ADVOCATE FOR CLAIMANT  
OPPONENT NOS.1 & 2 SERVED AND ABSENT

**MR.A.B.RAVAL**  
LEARNED ADVOCATE FOR OPPONENT NO.3  
(BAJAJ ALLIANZ GENERAL INSURANCE)  
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**:- JUDGMENT :-**

(1) The claimant has filed present claim petition for seeking compensation of **Rs.5,00,000/-** with interest at the rate of 18% p.a. from the opponents for the injuries sustained to her in a

vehicular accident occurred on **22.02.2020** at the time and place specified in the petition.

**SHORT FACTS OF THE ACCIDENT :-**

(2) The present claim petition emanates from the following facts :

(3) On 22-02-2020 claimant – **Shakuntalaben Arjunbhai Pasaya** was going as pedestrian along with her husband and at about 12:00 hours, while she was passing from Mendra Chokadi Road, at that time opponent No.1 came driving the Car No.GJ.06.MD.4685 in a very rash and negligent and careless manner and lost his control over the car and though claimant was walking on the side of the road, opponent No.1 hit his car with the claimant, whereby accident occurred, in which claimant sustained severe injuries. Thus, the accident occurred due to the rash and negligent driving on the part of the driver of the Car. This accident was reported to **Devgadh-baria** police station vide **Part 'A' C.R.No.0093/2020**.

**SHORT FACTS OF THE CASE :-**

(4) It is the case of the claimant that, at the time of accident, she was doing labour work and earning Rs.10,000/- per month. At the time of accident, she was 21 years old and she was sound and healthy. Due to rash and negligent driving of the driver of the offending vehicle, the accident occurred, wherein she sustained

severe injuries including fracture, for which, she was treated at Unity Hospital, Devgadh-bariya. She was remained indoor patient for a long time and she has also taken treatment as outdoor patient for a long time. She has incurred expenses towards her medical treatment, attendants, transportation etc. The claimant suffered pain, shock and agony. It is accordingly urged to award Rs.5,00,000/- as compensation for the accidental injuries from the opponents.

**OPPONENTS' DEFENCE :-**

(5) The opponents are duly served and opponent Nos.1 & 2 remained absent.

(6) Opponent No.3 – **Bajaj Allianz General Insurance Company Ltd.** filed appearance through the learned Advocate Mr.A.B.Raval vide Exh.06 and filed written statement vide Exh.10, wherein, the Insurance Company has resisted the claim petition and denied the averments, as made in the claim petition together with the negligence on the part of the driver of offending vehicle and the age, income of the claimant and other grounds of the claim petition. It is contended that the so-called accident was occurred on 22-02-2020, while complaint filed on 07-03-2020, so there is delay in filing the F.I.R. and it is suggests that vehicle No.GJ.06 MD.4685 planted to get compensation. It is next contended that opponent No.1 – driver of the car was not holding the valid and effective driving licence at the time of accident and

also not qualified for holding or obtaining such driving license. It is next contended that the claimed amount as well as interest thereon is alleged to be highly exaggerated. Lastly, it has been requested to dismiss the claim petition against the Insurance Company.

(7) To decide this claim petition, following issues have been framed at Exh.15.

### ISSUES

1. Whether it is proved that, the claimant sustained injuries on account of rashness or negligence in driving on the part of driver of the vehicle involved in the accident ?
2. What amount, if any, the claimant is entitled to by way of compensation and from which of the opponents ?
3. What order and award ?

(8) My findings on the above issues are as under :

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

(9) The Opponent No.3 Bajaj Allianz General Insurance Company Ltd. preferred an application u/S.170 of the M. V. Act to defend the Insurance company in absence of driver and owner

of the offending vehicle and the same permission came to be granted vide order dated 21-02-2026 below Exh.19.

**-: REASONS :-**

(10) During the proceedings of this claim petition, both parties have been given sufficient opportunity to produce their ocular and documentary evidence to prove their case. The claimant has filed her affidavit by way of chief-examination vide Exh.18 and she has been cross-examined by the learned Advocate for the opponent No.3 Insurance Company. The claimant has further produced following documentary evidence in support of the claim petition :

<b>Sr. No.</b>	<b>Documentary Evidence</b>	<b>Exh./ Mark</b>
1.	Copy of the complaint ;	23
2.	Copy of the panchnama of the spot ;	24
3.	Copy of the Medical Certificate ;	25
4.	Copy of the Certificate cum Policy Schedule ;	26
5.	Copy of the Certificate of Registration of vehicle No.GJ.06MD4685 ;	27
6.	Copy of the driving licence of the opponent No.1 ;	28
7.	Medical Bills and Receipts ;	29 to 40
8.	Certified copy of the charge-sheet ;	41

(11) The claimant has filed the closing puris vide Exh.42. The opponent Nos.1 & 2 remained absent at the time of recording evidence. The opponent No.3 Insurance Company has chosen not

to lead any oral or documentary evidence against the claim petition. The opponent No.3 Insurance Company has filed closing pursis vide Exh.43.

(12) Perused the written argument submitted by the learned Advocate Mr.A.T.Dadi for the claimant vide Exh.44. Heard argument of learned Advocate Mr.A.B.Raval of the opponent No.3 Insurance Company.

(13) Learned Advocate Mr.A.T.Dadi for the claimant has submitted in his arguments that, the accident took place due to sole rash and negligent driving of the driver of vehicle Car No.GJ.06.MD.4685 wherein claimant sustained injuries. The claimant was 21 years old at the time of accident and she was doing the labour work and earning Rs.10,000/- per month, which would have increased from time to time. She has permanent disability and has suffered severe pain and agony during treatment period. She has 17% disability as admitted by claimant side. She had incurred expenses towards various heads. Therefore, she is entitled to get the compensation as prayed for from the opponents. So far as the liability is concerned, it is submitted that the opponents are liable to pay compensation to the claimant.

(14) Learned Advocate Mr.A.B.Raval for the opponent No.3 insurance company has submitted in his argument that the claimant has failed to prove her income and even, nature of injury with disability is also not proved. She has not produced

any documentary evidence with regard to the expenses. It is submitted that so-called accident was occurred on 22-02-2020, while complaint filed on 07-03-2020, so there is delay in filing the F.I.R. and it is suggests that vehicle No.GJ.06 MD.4685 planted to get compensation. Lastly, it is requested to dismiss the claim petition against opponent No.3 insurance company.

(15) It is well settled that in case of motor accident claims, an endeavor is made to put the claimants in the pre-accidental position. The damages to be awarded are to be adequate in terms of money, so that, the injured / petitioners / claimants are put in the same position, had they not suffered the loss on account of wrong of the opponent, though no amount of compensation can restore the loss of limb or experience of pain or loss of life.

#### ISSUE NO.1 – NEGLIGENCE

(16) While deciding the issue of negligence, certain legal provisions with regard to M. A. C. P. claims are required to be taken note of. The Honourable Apex Court in case 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** has held that while deciding the point of negligence, it has to be borne in mind that 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.

(17) To prove the issue of negligence, claimant has filed her affidavit in the form of chief-examination vide Exh.18 and stated on oath that on 22-02-2020 she was going as pedestrian along with her husband and at about 12:00 hours, while she was passing from Mendra Chokadi Road, at that time opponent No.1 came driving the Car No.GJ.06.MD.4685 in a very rash and negligent and careless manner and lost his control over the car and though she was walking on the side of the road, opponent No.1 hit his motorcycle with her, whereby accident occurred, in which she sustained severe injuries. Thus, the accident occurred due to the rash and negligent driving on the part of the driver of the Car. This accident was reported to Devgadh-baria police station vide Part 'A' C.R.No.0093/2020.

(18) In cross-examination, she has admitted that, her date of birth is 28.04.2023. She has also admitted that she has not produced any documentary evidence to show her income, occupation and expenses. She did not know that driver of the vehicle was holding the valid and effective driving license and have the valid insurance policy. She has remained one week as indoor patient. She has also admitted that in the history before the doctor she has has not given the register number of vehicle. Except these questions all these questions denied by the claimant in his cross-examination. So far as the nature of accident is concerned, nothing fruitful to the case of opponent No.3 regarding the negligence for the accident could be traced out on record from the cross-examination.

(19) On perusal of **F.I.R. (Exh.23)**, lodged on 07.03.2020 by Arjunbhai Kushalsinh Pasaya, it reveals that on 22.02.2020 he along with his wife Shankutalaben was going towards the Mendra village and at about 12:00 hours while they were passing from Medra village Chokadi at that time driver of the Car bearing registration No.GJ.06.MD.4685 came driving his car rash and negligent manner towards the Chhotaudepur side and hit his car with the wife of the complainant, whereby accident occurred, in which wife of the complainant sustained injuries. Looking to the **Panchnama (Exh.24)** shows the place of incident as Chhotaudepur to Damavav Road, on the left side boundary of the Mendra Chokadi Road. No significant marks on the spot. Nothing has been recovered from the spot. **Charge-sheet (Exh.41)** has been filed against opponent Opponent No.1 – driver of the car. The accidental injuries of the claimant are substantiated by the Medical Certificate **(Exh.25)** and Disability Certificate **(Mark-21/20)**.

(20) From the oral evidence coupled with the documentary evidence produced on record, the claimant has successfully established that the accident occurred because of rash and negligent driving on the part of the driver of the Car No. GJ.06.MD.4685 and she sustained injuries in this accident. Hence, I reply to the Issue No.1 in the affirmative accordingly.

#### **ISSUE NO.2 - COMPENSATION**

(21) To decide the just compensation the important factor is the income of the injured or deceased. It is incumbent upon the

claimant to prove his actual income. The claimant is required to lead cogent evidence to establish his actual income. The claimant has to produce reliable material before the Tribunal upon which the tribunal can rely and assess his income.

(22) Claimant has further stated on oath that, in this accident, she sustained the injuries including the fracture injuries, for which, he was treated at Unity Hospital, Devgadh-bariya. She was admitted on 21.02.2020 and discharge on 24.02.2020. She has also taken treatment as outdoor patient for long time. According to the claimant, she incurred huge expenses on various heads. She has further stated on oath that, due to injuries, she suffered severe pain, shock and agony, and she sustained permanent disability, hence, she is facing difficulty in her work and her working strength is lower down, whereby her future income is also reduced due to the disability, for all these reasons, she will have to suffer economic loss in future.

(23) The claimant has relied on M.L.C.Certificate (**Exh.25**), issued by Dr. Gaurav Meda, Unity Hospital, Devgadh-bariya wherein, injuries noted. The claimant has further relied on the Disability Certificate (**Mark-21/20**) issued by Dr.Dinesh M. Solanki, wherein, the same injuries have been noted and after examination, this Medical Expert has assessed partial permanent disability of the claimant at 34.2% right lower limb. Here, the claimant has filed a pursis at **Mark-21/21**, wherein he has declared and agreed to consider 17% permanent disability for body as a whole against the partial disability, assessed by the

Medical Expert at 34.2%. But, learned Advocate for the insurance company raised the objection and requested to consider 11% permanent disability for body as whole. No doctor has been examined to prove the disability. It appears from the disability certificate at Mark-21/20 dtd. 28.08.2022 claimant has permanent disability on the right lower limb.

(24) In the the Judgment of the Hon'ble High Court of Gujarat in R/First Appeal No.1810 of 2017 - Bhudhesinh Gumansinh Rathva Vs. Keshar Singh S/O Peru Singh Ji decided on 12-10-2018 by the Hon'ble Justice Mr. S. G. Shah Saheb and upon perusal of which, it is found that the applicant has sustained disability in two limbs therefore, the formula mentioned in the Dr. Henry H. Kessler's book, it cannot be reduced upto 50% and the Hon'ble High Court of Gujarat has considered 75% permanent total disablement of body as a whole but herein this claim petition, the applicant has disability of fracture of femur. Medical witness Dr. Dhruvil R. Gandhi has stated in his affidavit at Exh.17 that the applicant has sustained 65% disability on the right leg. In the above Judgment of the Hon'ble High Court of Gujarat, it is observed that "It is well-known principle confirmed by the well-known Dr. Henry H. Kessler in his book namely Disability - Determination and evaluation wherein for combining disablements of different limbs, it is made clear that it should not be first reduced to 50% and then to add arithmetically as done in the present case." Thus, as per the Dr. Henry H. Kessler's book, if disability found in one limb can be reduced upto 50% for the disablement as a whole body. It can be said that disability varies

upto 2-3 per cent from Dr. to Dr.. Herein this claim petition, doctor has assessed disability at 34.2% of Right Lower Limb of the claimant and 50% of which, come to 16.25% and if we calculate 2% variation then, it finally comes to 14% body as a whole which this Tribunal has assessed herein this claim petition. Therefore, the permanent disability of claimant is taken as 14% for body as a whole to calculate the amount of compensation under the head of future economic loss.

(25) Claimant has shown her age as 21 years in claim petition, filed in year 2022 and 26 years while making the affidavit in the year 2026. No Birth Certificate or School Leaving Certificate of the claimant is produced on record. There is no contrary evidence on record about the age of the claimant, and therefore the age of the claimant is taken as 21 years for the purpose of deciding multiplier here in this case.

(26) Learned Advocate for the claimant has submitted that claimant is very young and therefore, 40% future prospect is required to be added. But, this Tribunal considered the disability as 14% and therefore, future prospective cannot be added.

(27) So far as the income of injured person is concerned, it is admitted fact that, no income proof is produced on record. There is nothing on record regarding her study or skill. In absence of exact proof for the income of claimant, this Court has to follow the guidelines of the Hon'ble Supreme Court, given in many cases relying upon the rates based on Government Approved

minimum wages for industrial labourer. Here in this case, the **accident occurred** on **22-02-2020** and as per the minimum wages rate, as declared by the Government, during the period of **01.10.2019 to 31.03.2020**, for unskilled person, it was Rs.9,310/-, therefore income of the claimant considered as Rs.9,310/- a month Now, considering 14% disability for body as a whole and **multiplier** of **18** for the age group 21 to 25 as per **Sarla Varma's** Case, the future loss of income will be as follows and it is awarded to the claimant.

**Loss of Future Income** = Rs.9,310/- (monthly prospective income) x 14% disability x 12 months X 18 (multiplier applicable) = **Rs.2,81,534/- (Round Figure)**, which is to be granted under the head of future economic loss.

(28) As per medical evidence on record, the claimant has sustain fracture injury and she was admitted on 21.02.2020 and discharge on 24.02.2020. She was also taken treatment as outdoor patient for a long time. The Disability Certificate reads that, he has sustained permanent partial disability extent to 34.2% and after considering the pursis of the learned Advocate for the claimant this Tribunal consider the disability at 14% body as a whole. Looking to these facts, more particularly, the nature of injury, this Tribunal is of the opinion to award **Rs.15,000/-** as compensation towards **pain, shock and suffering**.

(29) The claimant has produced medical bills and receipts collectively vide Exh.20 of Rs.47,574/- to show the expenses for

the treatment, she has taken. Considering the nature of injury, treatment, the claimant is entitled to get an amount of **Rs.47,574/-** under the head of **Medical Treatment Expenses**.

(30) So far as the expenses incurred towards transportation are concerned, the claimant was treated at Devgadhi-bariya. She is resident of Taluka Limkheda, Dist.Dahod itself. She has neither produced any transport bill nor any specific evidence for the expenses towards special diets and attendants. But, looking to the nature of injury, period of treatment as indoor patient as well as outdoor patient after discharge from the hospital, the claimant might have spent expenses towards such heads. In absence of any document, it would be just and reasonable to award **Rs.10,000/-** under the head of expenses on **transportation**, taking **special diets and attendants**.

(31) She has stated that, due to accidental injuries, she could not work for her livelihood for 12 months and she has lost his income. Claimant admitted on 21.02.2020 and discharge on 24.02.2020. Therefore, considering the opinion of the medical expert together with the nature of injury, this Tribunal is of the opinion to consider at-least one month for actual loss of income during which, the claimant could not have worked for her livelihood and lost his income and it comes to **Rs.9,310/-** and it is awarded to the applicant under the head of **actual loss of income**.

(32) The amount of compensation here in this claim petition comes as follows :

Rs.	2,81,534/-	Future Loss of Income.
Rs.	15,000/-	Pain, Shock and Suffering.
Rs.	47,574/-	Medical Treatment Expenses.
Rs.	10,000/-	Transportation, Attendants & Diets.
Rs.	9,310/-	Actual Loss of Income.
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<b>Rs.</b>	<b>3,63,418/-</b>	<b>Total</b>

#### **LIABILITY TO SATISFY THE AWARD**

(33) Here in this case, as discussed and decided above, the driver of the Car No.GJ-06-MD-4685 was liable for rash and negligent driving his vehicle and thereby, liable for occurrence of accident. The Driving License (Exh.28) shows that, the opponent No.1 was licensed to drive Light Motor Vehicle, so the opponent No.1 was authorized to drive offending vehicle herein. As far as the ownership of offending vehicle is concerned, it reveals from the Certificate of Registration (Exh.27) that, Suresh Kaniyalal Khatri, the opponent No.2 became the owner of vehicle Car No.GJ-06-MD-4685 w.e.f. 26-02-2019 and there-after, the accident occurred on 22-02-2020. Hence, the opponent No.2 was the owner on the day of incident. On perusal of Insurance Policy (Exh.26), it reveals that, vehicle Car No. GJ-17-D-4024 in the name of opponent No.2 was insured with the Bajaj Allianz General Insurance Co. Ltd. for the period from 19-02-2019 to 08-02-2022 which covers the date of accident i.e. dt.22.02.2020,

meaning thereby that the insurance policy of offending vehicle was in force on the day of accident. Therefore, the opponents No.1, 2, & 3, being the driver-owner and insurer of offending vehicles Maruti Swift Car No.GJ-06-MD-4685 is held liable to pay compensation.

(34) It is one of the argument of the learned Advocate for the opponent No.3 Insurance Company that there was 13 days delay in filing the complaint. But, present claimant met with an accident and therefore, she required urgent treatment first. Moreover, complainant is the husband of the claimant and therefore, it can be said that after the accident complainant remained with the injured wife – claimant. F. I. R. has also reveal that, the claimant has sustained injury in the accident. Investigating officer after investigation filed the charge-sheet against the opponent No.1. No rebuttal evidence produced by the opponent No.2 insurance company. So, according to the opinion of this Tribunal, the delay in filing claim petition would not fatal to the claim of claimant to obtain compensation for his accidental injury.

### **INTEREST**

(35) So far as the interest on awarded amount is concerned, having regards to the facts and circumstances of the case, by keeping in mind the principles enunciated by the Honourable High Court in the **First Appeal No.1564 of 2020** in case of **Reliance General Insurance Co. Ltd. Vs. Mangalsinh Gulabsinh Bariya and Anr.** and change of policy adopted by the Reserve

Bank of India with regard to rate of interest with effect from 01.04.2021, it would be just and proper to award the simple interest at 7% from filing of the claim petitions till payment of awarded amount.

### **ISSUE NO.3**

(36) In view of the above discussion, the opponents Nos.1, 2 & 3, being the driver, owner & insurer of offending vehicle Car No. GJ-06-MD-4685 is held liable to pay compensation, as determined above to the claimant along with interest at the rate of 7% per annum. I therefore the reply of Issue No.3 is concerned, following order is passed.

#### **:- ORDER :-**

1. The claim petition is partly allowed.
2. The claimant do recover an amount of **Rs.3,63,418/- (Rupees Three Lakh Sixty Three Thousand Four Hundred Eighty Only)** as compensation with interest @ 7% per annum from the date of filing the petition till realization of awarded amount along with proportionate costs from the opponents.
3. The opponents are liable to pay compensation to the claimant as ordered above and they are directed to deposit the amount of compensation in the office of this Tribunal within 30 days.

4. N.F.L. amount, if any paid, be deducted from the awarded amount.
5. On realization of the above said amount, deficit court fees, if any, shall be recovered.
6. Out of the amount going to the share of claimant, 30% amount along with interest etc. shall be paid to the claimant by crossed Account Payee Cheque and/or by NEFT or RTGS facility and rest of the 70% amount along with the interest etc., going to the share of claimant, shall be placed in Fixed Deposit with any Nationalized Bank for a period of 5 years in her name with liberty to the claimant to withdraw interest monthly or periodically, as the case may be. The Bank shall not permit any loan or advances or to create any encumbrance against the said F.D. receipt without the prior permission of this Tribunal.
7. The claimant is directed to submit the following details before Nazir of this Court within one week from today:-
  1. **Name of the claimant with address.**
  2. **Name of the Bank & Branch, Bank IFSC Code, Account Number of the claimant.**
  3. **The first page of the bank pass-book, which will compulsorily contain the photograph of the claimant, duly attested by the Bank concerned, should be made available.**

4. **The claimant is directed to furnish information if any change made in the above information afterwards, immediately.**
8. The opponents are also directed to scrupulously follow the direction given by the Hon'ble High Court in the case of Smt. Hansaguri Prafulchandra Ladhani & Ors. vs. The Oriental Insurance Co. Ltd. reported in **2007(2) G.L.H. Page 291** with regard to computation of interest by spreading the amount over the relevant year from the date of claim petition till the date of deposit and deduction of Tax at Source on the amount of interest.
9. The opponents do bear their own costs and to pay the cost to the claimant.
10. Award be drawn in terms of this judgment.
11. PDF Copy of this Judgment and Award be sent to opponent No.3 insurance company through email.

Pronounced in the open Court, today on this **24<sup>th</sup>** Day of **March, 2026.**

Dt.24/03/2026  
Place : Limkheda

**[Hareshkumar Himmatlal Thakkar]**  
**MOTOR ACCIDENT CLAIMS TRIBUNAL**  
**CLAIMS (AUX), Dahod at Limkheda**  
**[Code No.GJ 00533]**