

Petition filed on:

Petition registered on:

Petition Decided on: 07.05.2019

Duration :

Y. M. D. _____

Exh. _____

IN THE MOTOR ACCIDENT CLAIMS TRIBUNAL [MAIN]

AT:GANDHINAGAR.

M.A.C.P. Nos.386 AND 387 OF 2012

**CONSOLIDATED AND DISPOSED OF BY A COMMON JUDGMENT
IN M.A.C.P. NO.386/2013**

M.A.C.P. NO.386/2012

Applicant:

Smitaben Naginbhai Prajapati

Age: 25 years, Occupation : Singer

Residing at village:Majra,Taluka:Pratij,Distt.:Sabarkantha

Claim Rs.5,00,000/-

V/s.

M.A.C.P. NO.387/2012

Applicant:

Naginbhai Somabhai Prajapati

Age: 25 years, Occupation : Singer

Residing at village:Majra,Taluka:Pratij,Distt.:Sabarkantha

V/s.

Opponents:

[1] Mahendrabhai Fataji Baraiya

Age: 37 years, Occupation : Driving

Residing at Kamalbandh Vasna,Takuka:Dehgam,Gandhinagar

[2] Kalaji Amraji Thakor

Age:Adult,Occupation:Transporter

Residing at Isanpur Dodiya,Taluka:Dehgam,Dist:Gandhinagar

- [3] United India Insurance Company Ltd.
Having Office opposite Bank of Baroda, Info City, Gandhinagar
- [4] Chetanbhai Kanubhai Raval
Age: Adult, Occupation: Singer
Residing at Shivam Musical Group, Mota Isanpur
Taluka & Distt.: Gandhinagar.

Claim Rs.2,50,000/-

Appearance :-

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Mr.V.C.Patel: learned Advocate for claimants
Mr.K.R.Trivedi: learned Advocate for opponents No.1 and, 2
Mr.M.J.Parikh: learned Advocate for opponent No.3 - Insurance Co.
Mr.H.A.Mansuri: learned Advocate for opponent No.4

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Claim Compensation under Section 166 of the Motor Vehicles Act, 1988

// COMMON AWARD //

(Date: 07.05.2019)

- [1] The claimants have filed the above mentioned claim petitions, arise out of one and, same accident, occurred on 29/01/2012 at about 8.30 p.m. opposite the bus stand of village: Majra on National Highway No.8.

Both petitions arising out of the common accident and as the opponents are the same, necessary order has been passed below application Exh.27, it is ordered to decide by this common judgment and award at the instance of the parties thereto.

The claimants have filed both this petitions, for the accident, which took place on 29.01.2012. Due to the accident, fracture injuries were caused to them and, have claimed compensation of Rs.5,00,000/- and, Rs.2,50,000 with 9% interest and costs under the provision of Section 166 of

The M.V. Act, against the driver, owner and, the insurance company of the offending vehicles.

Facts of the case in common:-

[2] The facts transpire from both the Claim Petitions are that, on the day of accident, the were going on Motorcycle as pillion rider. proceeded from Majra to Mota Isanpur. The said vehicle was being driven by opponent No.4 with moderate speed on correct side of the road. While passes opposite the bus stand of village:Majra, one Toofan Jeep bearing No.GJ-9-Z-2944 was coming in full speed and, the said vehicle was being driven by opponent No.1 in rash and negligent manner, dashed to the motorcycle from back side, resultant into accident and, the applicants had sustained grievous fracture injury as shown in injury Certificates.

[2.1] It is the case of claimant of **M.A.C.P. No.386 of 2012** that, she was immediately taken to Civil Hospital,Gandhinagar, where she was treated primarily, but due to severe injuries, she was then shifted to Hi-Tech Hospital, Gandhinagar, where she was treated for one day from 29.01.2012 to 30.01.2012. Thereafter, she was transferred to Dev Hospital, Dr.Upendra N. Patel,Ahmedabad where she was treated as indoor patient for '10' days from 30/01/2012 to 08/02/2012. After primary treatment, it was found that, she was diagnosed with fracture of Lt. clavicle, for which, bandage given. Physiotherapy was given for ten days. She had to remain bed ridden for a considerable period of time and during that period, she could not attend her normal avocation of life what she was doing previously, she had suffered 11.5% permanent disability body as a whole. Certificate in this regard, is issued by Dr.A.I.Upadhyay,Orthopaedic Surgeon,Ahmedabad.

It is the case of applicant that,she was heal and healthy, was aged about 25 years at the time of accident and, was earning Rs.20,000/- per month

from singing as the applicant is a singer by profession. It is also the case of claimant that, due to accidental injuries, she could not sing properly as before. It is the case of applicant that, she had also suffered mental pain, shock and agony. It is stated by applicant that, she had incurred considerable amount after medical treatment, Special diet, transportation and, attendant charges.

It is further the case of claimant that due to severe injury, earning capacity of claimant has been affected adversely. Under the circumstances, under various heads, the claimant has claimed compensation of Rs.5,00,000/- with 9% interest and costs from the date of petition till realization from opponents.

[2.2] It is the case of applicant of **M.A.C.P. No.387 of 2012** that, he was immediately taken to Civil Hospital, Gandhinagar, where he was treated primarily, but due to severe injuries, he was then shifted to Dev Hospital, Dr. Upendra N. Patel, Ahmedabad where he was treated as indoor patient for '8' days from 30/01/2012 to 06/02/2012. After primary treatment, it was found that, he was diagnosed with fracture of 6th, 7th and, 12th ribs left side chest and, fracture of 11th rib on Rt. side chest, for which, strapping given; fracture of inferior pubic rami left side, for which, conservative treatment given. Physiotherapy was given for twenty days. He had to remain bed ridden for a considerable period of time and during that period, he could not attend his normal avocation of life what he was doing previously, he had suffered 21% permanent disability body as a whole. Certificate in this regard, is issued by Dr. A. I. Upadhyay, Orthopaedic Surgeon, Ahmedabad.

It is the case of applicant that he was heal and healthy, was aged about 64 years at the time of accident, was earning Rs.90,000/- per annum from agriculture and, Rs.85,000/- from vending milk, hence, aggregate income of

applicant was Rs.1,75,000/- per year. It is also the case of claimant that due to accidental injuries, he could not perform his normal avocation of life. It is the case of applicant that, he had also suffered mental pain, shock and agony. It is stated by applicant that he had incurred considerable amount after medical treatment, Special diet, transportation and, attendant charges.

It is further the case of claimant that due to severe injury, earning capacity of claimant has been affected adversely. Under the circumstances, under various heads, the claimant has claimed compensation of Rs.2,50,000/- with 9% interest and costs from the date of petition till realization from opponents.

Defence of opponents :-

[3] Notices were duly served to the opponents. The opponents No.1 and, 2 have appeared through their advocate, but have not filed any written statement.

The opponent No.3 - United India Insurance Company Ltd. has resisted the claim petitions by filing written statement filed Exhs.23 and, 24, denying each and every averment made in the petitions. It is denied that, accident was caused due to rash and negligent driving of jeep driver bearing vehicle No.GJ-9-Z-2944, but the opponent No.4 was driving the motorcycle in rash and negligent manner and, he is liable for causing the accident. It is contended that, manner in which the accident took place, it is a case of contributory negligence. The insurance company has denied the age and income of both the applicants. In the circumstances, the opponent No.3 - insurance company has filed application at Exhs.32 and, 33 under Section 170 of M.V.Act to contest the claim for and on behalf of driver and, owner of the offending vehicle, involved in the accident.

[4] From the pleading of the rival parties, following issues have been framed in common at Exhs.24 and, 25:-

ISSUES

1. Whether it is proved that the claimants had sustained injuries on account of rashness or negligent driving on the part of the driver of the vehicles involved in the accident?
2. What amount, if any, the claimants are entitled to by way of compensation and from which of the opponent?
3. What order and award?

[5] My findings on the above issues in common are as under:-

1. In negative.
2. As per order.
3. As per final order.

REASONS

[6] Applicants have led the oral evidence in which, they have filed an affidavit in the form of the evidence at Exhs.30 and, 31.

[7] In support of claim petition, the petitioner in Claim Petition No.386 of 2012 has placed reliance on the following documentary evidence.

Sr.No.	Documents	Exh.
1.	Copy of F.I.R.	39
2.	Panchnama of the place of accident	40
3.	Charge-sheet	41
4.	Discharge Card, issued by Hi-Tech Hospital, G'nagar	34
5.	Injury Certificate, issued by Dev Hospital	35
6.	Medical case papers, Dev Hospital	36
7.	Medical case papers, Rushi Surgical Hospital	37
8.	Disability Certificate, issued by Dr.A.I.Upadhyay, M.S.	49
9.	Medical bills for Rs.52,500/-	46

10.	Pursis regarding disability at 6%	42
11.	Insurance policy of Toofan Jeep bearing No.GJ-9-Z-2944	51
12.	Police papers	52

[7.1] The petitioner in Claim Petition No.387 of 2012 has produced the following documentary evidence:-

Sr.No.	Documents	Exh.
1.	Medical bill for Rs.26,247/-	47
2.	Disability Certificate, issued by Dr.A.I.Upadhyay, M.S.	45

Negligence

ISSUE NO.1:-

Common in both claim petitions

[8] Learned Advocate Mr.M.J.Parikh, appearing for the opponent No.3 - insurance company has submitted that, applicants have failed to establish the primary facts of involvement of the vehicle in the alleged accident.

He has further submitted that, incident was arise on 29/01/2012 whereas the police complaint was came to be lodged on 16.02.2012, which does not inspire confidence so far as involvement of vehicle Toofan Jeep bearing No.GJ-9-Z-2944 is concerned. Therefore, testimony of both the claimants on the issue of involvement of the jeep, cannot be relied upon and accordingly, the claim against the insurance company may be dismissed with costs.

[9] On the other hand, Mr.V.C.Patel, learned Advocate, appearing for the claimants, has vehemently argued that, both the claimants have stated on oath in respect of manner of accident and, involvement of the jeep and, looking to the police case papers, involvement of the jeep, having been established and, proved. He has further argued that, it is the insurance company to prove by

adducing believable evidence in respect of the non-involvement of the jeep, which they have failed to prove and, established. In view of this, involvement of the jeep having been proved and established and accordingly, negligence of opponent No.1 - jeep driver also proved and accordingly, he may be held liable for causing the accident.

[10] It is settled that, in the case of motor accidents, the claimant has to prove the primary facts of the accident and, involvement of the vehicle. Unless and until this fact having not been proved then onus would not shift upon the other side.

[11] Now, let us examine the evidence on record.

The claimant Smitaben Naginbhai Prajapati has been examined at Exh.30. Wherein she has stated that, on 29.01.2012, Toofan Jeep bearing No.GJ-9-Z-2944 had caused an accident by given a dash to the motorbike, owned by the opponent No.4. She has stated in her cross-examination that, incident was happened at about 8.00 p.m. and, after the accident, she did not inform the police. It is stated by claimant in her cross-examination that, after causing the accident, the driver of vehicle jeep in question, fled away from the spot.

She has admitted that, there was delay of '18' days in lodging the F.I.R. She has further stated that, rider of the motorbike, had also sustained injuries in the said accident. She has further stated that, she was accompanied by her husband at the hospital and, at the place of accident, her husband and, the brother had come. She has denied the suggestion that, jeep in question, did not have caused any accident as alleged by her.

[12] The other witness namely Naginbhai Somabhai Prajapati, who is the claimant in M.A.C.P. No.387 of 2012, who is examined at Exh.31. Wherein

he has admitted that, after the accident, he did not report to the police. This witness has admitted that, at the place of incident, his son-in-law and, brother-in-law namely Sanjaybhai had come as they have received the message from her, of the accident. This witness has denied the suggestion made to him that, jeep did not have caused the accident and, it was falsely implicated.

[13] Now, look at the police complaint Exh.39 came to be lodged by Sanjaykumar Naginbhai Prajapati, who happens to be the brother of claimant Smitaben and, son of claimant Naginbhai. This witness has tried to explain the delay in causing the F.I.R., stating that, he was with his sister and, the father for treatment at the hospital and, the rider of the bike namely Chetanbhai Kanubhai Raval had refused to provide the number of the jeep and, also did not give the number of his bike. It is further stated in the F.I.R. that number of Toofan Jeep was given by his friend one Mr.Dharmendrabhai, who had noted the jeep number at the time of accident.

[14] After having heard learned Advocates, appearing for both the sides and, considering the oral as well as documentary evidence on record, this Tribunal is of the view that, claimants are failed to establish and, proved the primary facts of involvement of Toofan Jeep bearing No.GJ-9-Z-2944.

[15] The oral testimony of the claimants so far involvement of the jeep in the accident is concerned, are not believable and, trustworthy. Both the claimants had ample opportunity to lodge the F.I.R. against the offending jeep driver, but they did not acted promptly. Even the complainant, Sanjaykumar Prajapati, as well as Rohitbhai, who is the husband of claimant Smitaben have had opportunity to lodge the F.I.R. against the jeep driver, but they had neglected the same for a period of '19' days.

[16] The claimant should have examined Dharmendrabhai, who had noted the number of the jeep and, had given the same to the complainant Sanjaybhai. Therefore, the whole story as set up by the claimants in their petitions as well as disclosed in the F.I.R. by Sanjaybhai, does not inspire its confidence so far as involvement of jeep is concerned. Therefore, the explanation given by the complainant regarding delay in lodging the F.I.R., is also not convincing and, acceptable.

[17] Learned Advocate Mr.V.C.Patel, for the claimants has submitted that, after the investigation, Mansa Police had submitted charge-sheet against the driver of Toofan Jeep, which shows the proof of involvement of the vehicle. This Tribunal is of the view that, merely, charge-sheet filed against the driver, is not sufficient to raise inference that, driver had caused the accident. The facts of involvement of the vehicle, shall be proved by the claimants, by adducing cogent and, believable evidence.

[18] In view of discussion made herein above, the claimants have failed to prove the facts of primary involvement of Toofan Jeep bearing No.GJ-9-Z-2944. It is required to be noted that, claimants have joined opponent No.4 as an owner of the bike, upon whom, both the claimants were pillion, passing on the Prantij road, opposite village : Majra. The claimants have not mentioned and, pleaded the number of bike upon whom, the opponent No.4 was riding at the time of accident. Even, there is no any pleadings of negligent act on the part of opponent No.4. Therefore, claimants have miserably failed to prove the involvement of the Toofan Jeep bearing No.GJ-9-Z-2944 as discussed herein above and accordingly, I held issue No.1 in negative.

ISSUE NO.2 AND 3:-

[19] As far as the question of compensation is concerned, the Tribunal

is of the view that, when the claimants have failed to prove issue No.1, subsequent issue for quantification of compensation need not follow and, answer issue No.2 accordingly. Hence, I pass the following final order towards issue No.3:-

COMMON AWARD

- [1] Both the Claim Petitions are hereby dismissed.
- [2] There shall be no order as to costs.
- [3] Decree in terms of aforesaid award be drawn accordingly.
- [4] The copy of the Award and decree be kept in other petition.

Pronounced in open Court on this **07th** day of **May,2019** at Gandhinagar.

Date:07/05/2019

Place:Gandhinagar

[Ilesh J. Vora]

GJ00136

M.A.C.Tribunal (MAIN)

Gandhinagar.

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