

GJGS010000682023



Received on : 21.01.2023
Registered on : 21.01.2023
Decided on : 10.04.2026
Duration : YY MM DD
03 – 02 – 20

IN THE MOTOR ACCIDENT CLAIMS TRIBUNAL
(MAIN), GIR-SOMNATH AT VERAVAL.

M.A.C. PETITION NO. 06 / 2023

Exhibit : ____

Bharatbhai Arjanbhai Solanki

Age : 28 Years, Occupation : Agriculture/Trade

R/o. : Ghusiya-Gir,

Tal. : Talala, Dist. Gir-Somnath.

..... **APPLICANT**

V E R S U S

Driver-cum-Owner & Insurance Company of the
Motorcycle Bullet Chachis No. ME3U3K5FING004000

1] Haribhai Kalabhai Pampaniya

Age : 28 Years, Occupation : Agriculture,

R/o. : Gundaran, Tal. Talala-Gir, Dist. Gir-Somnath.

2] I.C.I.C.I. Lombard General Ins. Co. Ltd.

At : Ahmedabad.

..... **OPPONENTS**

Subject : Petition filed under Section 166 of the M.V. Act for
getting compensation of Rs.20,00,000/-.

Appearance

Mr. M.G. Sikotra, Learned Advocate for the applicant.

Ex-parte against opponent No.1.

Mr. V.H. Kanjaria, Learned Advocate for the opponent No.2.

J U D G M E N T

- 1] Present claim petition is preferred by the applicant under Section 166 of The Motor Vehicle Act, 1988, (*here-in-after referred to as "The M.V. Act" for sake of convenience and brevity*) for getting compensation of Rs.20,00,000/- (Rupees Twenty Lacs Only) for the injuries caused to him in the vehicular accident involving Motorcycle Bullet Chachis No. ME3U3K5FING004000, Engine No. U3K5FING254753.

- 2] The factual matrix leading to the present proceedings are that; on 25.08.2022 at about 06:00 to 06:30 p.m., the applicant and his sister were travelling on a Hero Honda motorcycle on Talala–Madhupur road and reached in front of Krishna School. At that time, opponent No.1, riding a Bullet motorcycle at high speed and in a rash and negligent manner, collided with them. As a result of the accident, the applicant sustained grievous injuries, including three fractures in the right leg below the knee, a fracture in the right hand above the wrist, and multiple bodily injuries. Surgical operations were performed and rods/plates were inserted. The applicant's sister also sustained bodily injuries. The applicant received treatment at Talala, Veraval, and Rajkot hospitals. Due to the injuries, he is unable to work and has suffered financial loss. Due to the said accident, the applicant suffered permanent partial disability of 50% of whole body. Subsequently, on 14.09.2022, the complaint of the accident was lodged before Talala Police

Station being C.R. No. 11186007220483/2022. The applicant incurred expenditure towards medical treatment, special diet, attendant, transportation etc. Thus, the accident in question occurred solely due to the rash and negligent driving of opponent No.1 and as a result, the applicant has sustained grievous injuries, permanent disability and financial as well as physical loss. That, the applicant was 28 years old, healthy, and earning about ₹20,000 per month by doing agriculture and milk business but due to such disability, his earning capacity has been reduced. The accident occurred solely due to the rash and negligent driving of opponent No.1. On all such grounds, applicant has claimed Rs.20,00,000/- together with interest at the rate of 18% per annum jointly and severally from the opponents.

- 3] The notices of the claim petition were served upon the opponents. However, opponent No.1 has not appeared to contest the matter. Hence, the matter is ordered to proceed Ex-parte against him.
- 3.1] The Ld. Advocate for the opponent No.2 has filed the written statement at **Exh.15** inter alia denying all the contents of the claim petition including negligence on the part of the opponent No.1, age, income and injuries sustained to the applicant in the alleged accident. The manner of accident, negligence of the driver and involvement of offending motorcycle in the alleged accident is also denied by the opponent No.2. That, this opponent submits that the applicant himself is the author of

the accident, he himself is the sole responsible for the accident, therefore, this opponent is not liable to pay compensation. Alternatively, it is submitted that, the applicant is contributory responsible for the occurrence of the accident, therefore, percentage of negligence of applicant shall be determined. It is also contended that the driver of offending vehicle was not holding valid and effective driving license to drive it at the time of accident. It is accordingly urged to dismiss the claim petition with costs against the opponent Insurance Company.

4] From the above referred pleadings, following issues are framed by my Learned Predecessor at **Exh.16**.

(1) Whether the applicant proves that the injured sustained injuries on account of rash and / or negligent driving on the part of the 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 opponent/opponents ?

(3) What order and award ?

5] My findings to the above issues are as under.

(1) In the partly affirmative.

(2) In affirmative as per final order.

(3) As per final order.

:- REASONS :-

Issue No.1

- 6] In order to prove his case, the parties have produced the following oral as well as documentary evidence :-

Oral evidence of Applicant :-

Sr. No.	Documents	Exh.
1	An affidavit in form of Examination-in-chief of the applicant, namely, Bharatbhai Arjanbhai Solanki.	22

Documentary evidence of Applicant :-

Sr. No.	Documents	Exh.
1	True copy of F.I.R.	24
2	True copy of Panchnama of the place.	25
3	Copy of insurance policy of the alleged Motorcycle.	26
4	Copy of M.L.C. certificate.	27
5	Copy of Adhar card of the applicant.	28
6	Copy of Pan card of the applicant.	29
7	True copy of charge-sheet.	30
8	Disability certificate.	31
9	Consolidated medical bills.	32

Oral evidence of Opponent No.2 :-

Sr. No.	Documents	Exh.
1	Deposition of witness, Gopalbhai Pravinbhai Mangukiya, Assistant, Motor Vehicle Inspector, R.T.O., Veraval.	41
2	Affidavit in the form of Examination-in-chief of Mr. Pulkit N. Sanghavi, Legal Manager, ICICI Lombard General Insurance Co. Ltd.	45

Documentary evidence of Opponent No.2 :-

Sr. No.	Documents	Exh.
1	Extract of Driving License of the opponent No.1.	42
2	Certificate-cum-policy receipt of the alleged vehicle.	48
3	Postal acknowledgment receipt.	49
4	Notice issued to the opponent No.1 to produce the Driving License.	50

- 7] Ld. Advocate for the applicant has filed the closing pursis at Exh.36, whereas Ld. Advocate for the opponent No.2 has produced the closing pursis vide Exh.52.
- 8] Heard the learned Advocates appearing for the respective parties. I have also considered the oral submissions canvassed on their behalf. I have carefully gone through the pleadings, oral as well as documentary evidence available on record and the various judgments and authorities relied upon by the learned Advocate for opponent No.2 in support of the contention that opponent No.1 was not holding a valid and effective driving licence at the time of the accident. The learned Advocate for the applicant has also placed reliance upon several judicial pronouncements in support of his contention that the Insurance Company has failed to establish willful breach of policy conditions and that, in any case, the principle of “pay and recover” ought to be applied even if there is breach relating to the driving licence. All the said authorities have been duly considered in light of the facts and evidence of the present case.
- 9] It is submitted by the Ld. Advocate for the applicant that, he is a third party and since the vehicle owner neither filed a reply nor led evidence, the plea of contributory

negligence cannot arise. The Insurance Company has not examined its investigating officer and the charge-sheet does not contain any allegation that the driver lacked a valid driving licence. No section regarding absence of licence has been applied, nor has the charge-sheet been challenged or amended. The R.T.O. officer (Exh. 41) admitted that he had not brought any record regarding the learning licence and only stated that a fresh application is required if a permanent licence is not obtained after six months. The Insurance Company's argument regarding renewal within thirty days is irrelevant as the issue concerns a learning licence. Further, the Insurance Company's officer (Exh. 45) admitted that he did not meet the driver, did not personally obtain licence details from the R.T.O., and could not clarify the applicability of policy conditions to a third party. Thus, the Insurance Company has failed to prove breach of policy conditions or absence of a valid licence, and its defence remains unsupported by cogent evidence.

- 10] The Learned Advocate for the opponent No.2 has submitted written arguments at Exh.53, wherein it is contended that, the applicant has not proved that the accident occurred due to rash or negligent driving of Opponent No.1. It is argued that the manner of accident and the involvement of the alleged Bullet motorcycle are denied and that the applicant himself is responsible for the accident or, at least, contributed to it. The age, income, injuries, disability, and medical expenses claimed by the applicant are also denied as they are exaggerated and not supported by proper evidence. It is further submitted that Opponent No.1 was not holding any valid and effective driving licence at the

time of the accident and that he obtained the driving licence only after the occurrence of the accident, which amounts to a clear breach of the insurance policy conditions. Therefore, the Insurance Company cannot be held liable to pay compensation. Alternatively, it is submitted that the claim amount is excessive and unjustified, and hence the claim petition deserves to be dismissed against Opponent No.2 or the liability, if any, be restricted strictly as per law.

- 11] While deciding the point of negligence, it has to be borne in mind that the negligence is required to be proved in claim petition under Section 166 of the Act only on the touchstone of the preponderance of probability and not beyond doubt. Above referred ratio is laid down by Hon'ble Apex Court in the cases of *(i) Bimla Devi V/s. H.R.T.C., reported in A.I.R. 2009 SC 2819* and *(ii) Parmeshwari Devi V/s. Amir Chand, reported in 2011(11) SCC 635*.
- 12] The applicant - Bharatbhai Arjanbhai Solanki has filed examination-in-chief vide **Exh.22**. In his examination-in-chief, he has stated the same story which has been narrated in the claim petition. He has been cross-examined by the Learned Advocate for the opponent No.2 wherein, he has admitted that, at the time of accident, he was driving the motorcycle. He stated that, motorcycle/Bullet was coming without light from the opposite direction and the accident occurred at about 06:30 hours evening. He voluntarily stated that, road was two lane and two vehicles can easily pass on the road. He further voluntarily state that, he has lodged the complaint of the alleged accident after 20 days

of the accident. He has denied the suggestion that, the accident was occurred due to his negligence.

13] Over and above the ocular evidence, the claimant has produced documentary evidence in support of his case. The applicant has relied upon FIR **Exh.24**. The F.I.R. discloses the fact that, the accident had taken place due to negligence of the driver of Motorcycle Bullet. It appears that, complainant/applicant and his sister were travelling on their motorcycle, while the opponent, riding a Bullet motorcycle at high speed and in a rash and negligent manner, collided with them near Krishna School on the Gundaran–Madhupur road. Due to the accident, applicant sustained injuries, including fractures. The panchnama of the scene of offence produced at **Exh.25** reveals that, no vehicles were found at the spot. The road was approximately 12 feet wide and black-coloured fibre parts were found lying thereon. No skid marks or brake marks were noticed at the spot. The charge-sheet is filed at **Exh.30**, wherein it is stated that, the accused, while riding a Bullet motorcycle, drove the vehicle at an excessive speed and in a rash and negligent manner near Krishna School on the Gundaran–Madhupur road and collided with the motorcycle of the complainant, on which the complainant and witness Ramilaben were travelling. Due to the accident, the complainant sustained injuries including fractures. Perusing the M.L.C. at **Exh.27** and medical prescriptions and bills at **Exh.32**, it appears that, the applicant sustained injuries due to the alleged accident.

14] It is pertinent to note that, though the learned advocate for

the opponents have disputed the rash and negligent driving on the part of the opponent No.1 for happening of the accident, the opponent Nos.1 & 2 have not led any ocular as well as documentary evidence to prove the said particular defence and to rebut the evidence led by the claimants. The opponent No.1, who was the driver-cum-owner of the offending motorcycle have not stepped into witness box and even he was not examined by the opponent No.2 Insurance Company. Therefore, adverse inference requires to be drawn against him.

- 15] Upon careful appreciation of the entire oral as well as documentary evidence on record, it clearly transpires that, the accident in question occurred due to head-on collision between both the vehicles coming from opposite directions. The FIR produced at Exh.24, though attributes negligence to the driver of the Bullet motorcycle, at the same time discloses that, both the vehicles were moving towards each other on the same road and the collision occurred from the front side. The panchnama of the scene of offence at Exh.25 reveals that, the road at the place of occurrence was approximately 12 feet wide and straight and there were no skid marks or brake marks found on the spot, which indicates that, neither of the drivers made sufficient attempt to control their respective vehicles or to avoid the collision. Further, the charge-sheet at Exh.30 also indicates that, the collision was frontal in nature. It is pertinent to note that, the applicant himself, in his cross-examination, has categorically admitted that, the road was a two-lane road

and that, two vehicles can easily pass from that road. He has also admitted that, the offending vehicle was coming from the opposite direction. This admission clearly establishes that, there was sufficient space and opportunity for both the drivers to avoid the accident by taking reasonable care and precaution.

- 16] It is well settled that, in a claim petition under Section 166 of the Motor Vehicles Act, negligence is to be decided on the touchstone of preponderance of probability. In the present case, though the FIR and charge-sheet attribute negligence to the driver of the Bullet motorcycle, the surrounding circumstances, spot panchnama, and the admissions in cross-examination create a strong probability that, both the drivers failed to maintain proper control, speed, and lookout while driving their vehicles. The absence of skid marks further strengthens the inference that, both the drivers did not take timely steps to avoid the accident. Moreover, the nature of impact being a head-on collision itself raises a presumption that, both the vehicles were driven without due care and caution. In such circumstances, it would not be safe to hold that, only one driver was solely responsible for the accident. If one of the driver would have taken proper care and caution while driving, then the so-called accident could have been avoided. On the contrary, the material available on record clearly suggests that, both the drivers contributed to the occurrence of the accident by their respective negligent acts. Therefore, considering the totality of the evidence on

record, this Tribunal is of the opinion that, there was contributory negligence on the part of both the drivers. In absence of any clear and cogent evidence to fix higher degree of negligence on either side, it would be just and proper to apportion the negligence equally. Accordingly, the contributory negligence is assessed at 50% on the part of the applicant and 50% on the part of the driver of the offending vehicle. Hence, I answer Issue No.1 in partly affirmative.

Issue No.2

- 17] The next issue for determination is the just, fair and reasonable amount of compensation payable to the applicant. The applicant has stated in his affidavit that, at the time of the accident, he was 28 years old and earning ₹20,000/- per month by doing agriculture and milk business. However, admittedly, no documentary evidence has been produced to substantiate the said income. In his cross-examination, the applicant has categorically admitted that, he has not produced any proof in support of his alleged income. Mere assertion in the claim petition or affidavit is not sufficient to prove income and the burden squarely lies upon the claimant to establish the same by reliable evidence. It is true that, claimant cannot be expected to maintain strict accounts of his income. However, in the absence of any supporting material, the Tribunal is required to assess income on a reasonable and legal basis. In the present case, considering the nature of work and the relevant Government Notification issued by the Labour and

Employment Department, the occupation of the claimant is required to be treated as skilled labour. As per the minimum wages prevailing at the relevant time, i.e. during the period from 01.04.2022 to 30.09.2022, the monthly income of a skilled worker was ₹9,550/- for 26 working days. Hence, the monthly income of the applicant is assessed at ₹9,550/-. In view of the law laid down by the Hon'ble Apex Court in ***National Insurance Co. Ltd. Vs. Pranay Sethi and Ors.***, future prospects are required to be added. Considering the age of the applicant, 40% is added towards future prospects. Accordingly, the monthly prospective income comes to ₹13,370/- (₹9,550/- + ₹3,820/-), which comes to ₹1,60,440/- per annum for the purpose of computation of compensation.

- 18] That at the time of accident, applicant was 28 years of age and in respect of it, applicant has produced his Adhar Card and PAN Card at **Exh.28 & 29** respectively in which his date of birth is mentioned as 10.08.1993 and the incident took place on 25.08.2022. Hence, considering it, the age of the applicant was 29 years on the date of accident. Therefore, 17 would be the multiplier as per *Sarla Verma's* case.
- 19] To establish disability, the applicant has produced a disability certificate at Exh.31 issued by Dr. Pravin M. Vaishnav, M.S. (Ortho.), Veraval, wherein permanent partial disability is assessed at 50% in respect of the upper and lower limbs, considering the body as a whole. Relying upon the M.L.C. certificate and the said disability

certificate, the learned Advocate for the applicant has submitted that, the applicant has suffered permanent partial disability to the extent of 50% of the whole body. However, it is pertinent to note that, the applicant has not examined the doctor who issued the disability certificate. Subsequently, the learned Advocate for the applicant has filed a pursis at Exh.35 and fairly agreed that the permanent functional disability may be assessed at 20% of the whole body. The learned Advocate for opponent No.2 has endorsed below the said pursis, declaring that he has no objection, if the disability of the applicant is assessed at 20%. In view of the aforesaid facts and submissions, this Tribunal considers it just and proper to assess the permanent disability of the applicant at 20% of the whole body. Accordingly, the applicant is entitled to compensation under the head of loss of future income, calculated as ₹1,60,440/- per annum × 20% disability × multiplier of 17 = ₹5,45,496/-. Hence, the applicant is entitled to ₹5,45,496/- towards loss of future income.

- 20] It clearly emerges from the record that, the applicant has sustained permanent impairment. As discussed hereinabove, on account of the said accident, the applicant suffered serious injuries, which have resulted in permanent disablement. The applicant has not produced any documentary evidence to substantiate expenditure towards transportation, special diet, or attendant charges. However, the applicant has produced medical bills at Exh.22 evidencing expenditure incurred towards medicines and

medical treatment amounting to ₹4,25,110/-. Considering the nature and gravity of the injuries sustained, the extent of permanent disability, the period of hospitalization, and the submissions advanced by the learned Advocates appearing for the respective parties, the applicant is entitled to receive compensation under the following heads, as detailed herein-below:-

Sr. No.	Amount (Rs.)	Head
1	5,45,496/-	Future Loss of Income.
2	4,25,110/-	Medical expenditure.
3	10,000/-	Pain, Shock and Suffering.
4	9,550/-	Actual Loss of Income. (One month)
5	15,000/-	Transportation, special diet and loss of income of care-taker.
6	10,05,156/-	Total amount of compensation

Liability

- 21] The applicant has joined opponent No.1 as the driver-cum-owner and opponent No.2 as the insurer of the motorcycle bearing registration No. GJ-32-AB-9957. It is already held in Issue No.1 that the accident occurred due to rash and negligent driving of drivers of both the offending vehicles i.e. claimant and opponent No.1. It is decided in Issue No.1 that, opponent No.1 was the driver of the alleged motorcycle i.e. Bullet at the time of the accident. Though the applicant has not produced the Registration Certificate of the motorcycle, on perusal of the insurance policy

produced at Exhibit-48, it clearly appears that, opponent No.1 is the owner of the said motorcycle bearing registration No. GJ-32-AB-9957. The ownership is duly verified from the chassis number and engine number mentioned therein. From the insurance policy produced at Exh.48, it clearly appears that the offending vehicle was insured with opponent No.2 for the period from 11.08.2022 to 10.08.2023, which admittedly covers the date of accident i.e. 25.08.2022. Thus, existence of valid insurance policy is not in dispute.

- 22] The principal defence raised by opponent No.2 – Insurance Company is that, opponent No.1 was not holding a valid and effective driving licence at the time of the accident and therefore, there was breach of policy condition as well as violation of Section 3 of the Motor Vehicles Act. It is well settled that, the burden of proving such breach lies upon the Insurance Company.
- 23] In order to substantiate the said defence, opponent No.2 has examined Shri Gopalbhai Pravinbhai Mangukiya, Assistant Motor Vehicle Inspector, R.T.O., Veraval at Exh.41 and has produced the extract of driving licence at Exh.42. The said witness has deposed regarding the details of the licence and its issuance. The opponent No.2 has also examined Shri Pulkit N. Sanghavi, Legal Manager of the Insurance Company at Exh.45, who has reiterated the stand of the Insurance Company regarding alleged absence of

valid driving licence on the part of opponent No.1 at the time of the accident. The Insurance Company has also produced documentary evidence including policy and notice issued to the driver.

- 24] However, upon careful appreciation of the aforesaid oral as well as documentary evidence, it appears that, the same is not sufficient to conclusively establish that, opponent No.1 was not holding any kind of valid and effective driving licence on the date of the accident. Mere production of licence extract showing issuance of licence at a later point of time is not sufficient to prove that, no licence existed on the date of accident. The evidence led by the Insurance Company, therefore, does not inspire full confidence so as to hold that, there was a clear and willful breach of policy condition.
- 25] No witness could conclusively prove that, opponent No.1 did not possess a license on the day of the accident. Had the opponent No.1 contravened the provisions of Section 3 and Section 181 of the M.V. Act. The police would have definitely charged him with Section 181 and therefore, this court is of the view that, the defence of the insurance company that opponent No.1 had breached the conditions of the policy by not possessing a driving license cannot be taken into account. The Investigation Officer in this case has not been examined to corroborate the contention of the insurance company. Therefore, there is not breach of any

condition of the policy. At no point of time the insurance company or its investigator made an application to the investigating officer to add charges under Section 3 r/w 181 of the M.V. Act in the charge-sheet or made any application in the trial court after filing of the charge-sheet in the trial court.

26] In view of the aforesaid discussion and considering the facts of the case that, the Insurance Company has failed to prove that opponent No.1 was not holding a valid and effective driving licence at the time of the accident and the settled position of law that, the breach of policy condition must be strictly proved by the insurer by leading cogent and convincing evidence, this Tribunal is of the opinion that, opponent No.2 has failed to discharge its burden of proving breach of policy condition. Accordingly, it is held that, there is no breach of policy condition and opponent No.2 – Insurance Company cannot be exonerated from its liability. Opponent No.1 being the driver-cum-owner and opponent No.2 being the insurer of the offending vehicle are jointly and severally liable to pay compensation to the applicant.`

27] However, it has already been held while deciding Issue No.1 that, the accident occurred due to contributory negligence of both the drivers involved in the accident i.e. the applicant as well as opponent No.1 and the negligence has been apportioned in the ratio of 50:50. Therefore, the

applicant shall be entitled to recover **only 50% of the awarded compensation of Rs.10,05,156/-, i.e. Rs.5,02,578/-**, from the opponents. Consequently, for the reasons discussed herein-above, the claim petition is partly allowed and the following final order is passed:-

ORDER

- (1) The claim petition is hereby **partly allowed**.
- (2) The applicant is awarded Rs.10,05,156/-, however, he is entitled to recover only 50% thereof i.e. **Rs.5,02,578/- (Rupees Five Lacs Two Thousand Five Hundred Seventy Eight Only)**, together with proportionate costs and interest at the rate of 9% per annum from the date of the claim petition till realization, jointly and severally from opponents.
- (3) The opponents are hereby directed to deposit awarded amount within 30 days of the order.
- (4) On depositing the amount in the Registry of this Tribunal, Registry is directed to first deduct the amount of deficit court fees, if any. Interim amount if paid be adjusted.
- (5) Out of the awarded amount, 70% amount be invested as fixed deposit in any nationalized bank in the name of applicant for initial period of five years. The remaining 30% amount be paid to the applicant

by NEFT/RTGS forthwith. The applicant will not be entitled to get any loan, advance or withdrawal or can create any encumbrance on the aforesaid fixed deposit without prior permission of this Tribunal. However, periodical interest accrued from time to time on the said fixed deposits be paid in cash to applicant.

- (6) The Hon'ble High Court of Gujarat in the most recent judgment delivered on 05-04-2022 by Hon'ble Mr. Justice J. B. Pardiwala and Hon'ble Ms. Justice Nisha M. Thakore in the case of ***The Oriental Insurance Co. Ltd. V/s. Chief Commissioner of Income Tax (TDS) bearing Special Civil Application No.4800/2021*** have concluded that, the interest awarded by the Motor Accident Claims Tribunal under Section 171 of the Motor Vehicles Act, 1988, is not taxable under the Income Tax Act, 1961. The Hon'ble Division Bench has further observed that, the interest awarded in the motor accident claim cases from the date of the claim petition till the passing of award, or in the case of Appeal, till the judgment of the High Court in such appeal, would not be exigible to tax, not being an income and the insurance companies or the owners of the motor vehicles depositing the requisite amount in due compliance with the awards of the Motor Accident Claims Tribunals shall deposit the

full amount with the Tribunal and shall not deduct tax under Section 194A of the Income Tax Act on the interest awarded by the Motor Accident Claims Tribunal. Thus, the opponent No.2 shall scrupulously follow these directions of the Hon'ble High Court of Gujarat.

- (7) The opponents shall bear their own costs of this petition.
- (8) Award be drawn accordingly.

Signed and pronounced in the open Tribunal today on this 10th day of April, 2026.

Place : Veraval.

Date : 10.04.2026

(Vikramsingh B. Gohil)
Chairman
M. A. C. Tribunal (Main),
V E R A V A L
Unique ID No.GJ01042