



**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 her in the vehicular accident involving Motorcycle No. GJ-32-AB-8786.
  
- 2] The factual matrix leading to the present case is that, on 25/01/2023 between 18:00 to 18:30 hours, applicant was travelling as a pillion rider on motorcycle bearing Registration No. GJ-32-AB-8786 on Talala–Galiyawad road near Narsinh Tekri, an accident occurred due to the rash and negligent driving of Opponent No.1, who lost control over the vehicle causing it to slip, as a result of which the applicant sustained grievous injuries to the left arm and spine, including displacement of two vertebrae, and underwent surgery with screw fixation at Cheers Hospital, Ahmedabad, and as per MLC records, due to such injuries, the applicant is presently unable to work and is almost bedridden, thereby suffering financial loss along with medical expenses of about Rs.5,00,000/- and mental pain and suffering. 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 aged about 39 years and was earning approximately Rs.15,000/- per month from beauty

parlour work and maintaining the family, however, due to such disability, her earning capacity has been substantially reduced. On all such grounds, the applicant has claimed compensation of Rs.20,00,000/- together with interest at the rate of 12% per annum from the opponents, jointly and severally.

3] The notices of the claim petition were served upon the opponents. However, the opponent Nos. 1 & 2 have not appeared to contest the petition though granting sufficient opportunities, hence, the matter was proceeded ex-parte against them.

3.1] The Ld. Advocate for the opponent No.3 has filed the written statement at **Exh.18** 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.3. 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.15**.

(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 affirmative.
- (2) Party in affirmative and as per final order.
- (3) As per final order.
- 6] In order to prove her case, the applicant has led following oral as well as documentary evidence :-

**Oral evidence of Applicant :-**

Sr. No.	Documents	Exh.
1	An affidavit of chief examination of applicant Nasimben Salimbhai Nareja.	35

**Documentary evidence of Applicant :-**

Sr. No.	Documents	Exh.
1	True copy of D.O. Letter.	28
2	True copy of the extract of the station diary.	29
3	Copy of Panchnama of the place.	30
4	Copy of M.L.C. certificate.	31
5	Copy of R.C. Book of the opponent No.2.	32
6	Copy of Insurance policy of the opponent No.3.	33
7	Consolidated Medical Bills and reports.	37

8	Report of Radiology.	38
9	Payment receipts of Cheers Hospital	39-42
10	Disability certificate.	43

- 7] To defend its case, the opponent Nos.1 & 2 have not produced any ocular as well as documentary evidence. Ld. Advocate for the applicant has filed the closing pursis at Exh.47, whereas opponent No.3 has produced the closing pursis vide Exh.48.
- 8] Heard Learned Advocates for both the sides. Also considered the written arguments submitted by Learned Advocate for the opponent No.3 at **Exh.49** as well as oral arguments canvassed by the advocate of applicant.
- 9] It is submitted by the Ld. Advocate for the applicant that, the present claim petition arises out of a motor vehicular accident dated 25/01/2023, which occurred due to the rash and negligent driving of Opponent No.1 while the applicant was travelling as a pillion rider on the motorcycle, resulting in grievous injuries including spinal damage and permanent disability, for which she underwent surgery at Ahmedabad, and due to such injuries, she is unable to work and has suffered substantial financial loss, medical expenses of about Rs.5,00,000/- and mental pain and suffering. It is further submitted that, at the time of accident, the applicant was aged about 39 years and earning approximately Rs.15,000/- per month from beauty parlour work, however, her earning capacity has been considerably reduced due to the disability and as the accident occurred solely due to the

negligence of Opponent No.1. Opponent Nos.1, 2 and 3, being driver, owner and insurer respectively, are jointly and severally liable to pay compensation of Rs.20,00,000/- with interest at the rate of 12% per annum, which is just and reasonable.

- 10] The Learned Advocate for the opponent No.3 has submitted his written arguments vide **Exh.49** wherein, it is submitted that, the present claim petition filed under Section 166 of the Motor Vehicles Act is not maintainable as the applicant has utterly failed to prove negligence on the part of the driver of opponent No.1, which is an essential requirement for claiming compensation under the said provision. There is no FIR registered against the alleged driver and even in the “Janva Jog” entry no vehicle number is disclosed and the police papers produced by the applicant do not establish any negligent act. The applicant has not examined any eye-witness nor produced cogent evidence to prove rash and negligent driving and there are no specific averments regarding negligence in the police statement. The petition appears to be filed in collusion with opponent No.1, who is a close relative of the applicant and has remained absent in proceedings. As per settled law laid down by the Hon’ble Apex Court in *Surender Kumar Arora v. Manoj Bisla*, *Oriental Insurance Co. Ltd. v. Meena Variyal*, *Premlata Shukla’s* case and various Gujarat High Court judgments, the burden lies upon the claimant to plead and prove negligence, failing which no compensation can be awarded under Section 166. Further, income is not proved and only

notional income may be considered and even if compensation is awarded, interest should not exceed 5% per annum. Therefore, the insurance company is not liable and the claim petition deserves to be dismissed.

## **REASONS**

### **Issue No.1**

- 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 – Nasimben Salimbhai has filed her examination-in-chief at Exh.35 and has supported the case as stated in the claim petition. In her cross-examination, she denied the suggestions regarding false statement of age, income, injuries and permanent disability as well as production of false disability certificate. However, she admitted that she had not lodged any police complaint alleging negligent driving against the driver. She further denied that, no medical expenses were incurred or that she is presently able to work as before the accident and also denied that the motorcycle bearing No. GJ-32-AB-8786 was not involved in the accident or that she has filed a false claim to obtain compensation.

- 13] Over and above the oral evidence, the claimant has produced documentary evidence in support of her case. The applicant has relied upon documentary evidence including D.O. letter at Exh.28, station diary entry at Exh.29, panchnama of place of occurrence at Exh.30 and medical evidence at Exh.31 and Exh.37 to 42. The said documents indicate that the accident was reported to the police, the applicant had sustained injuries in a vehicular accident and the alleged vehicle was found in damaged condition at the spot. The medical record further corroborates that the applicant sustained injuries in the said accident.
- 14] In view of the discussion made hereinabove and considering the evidence on record, this Tribunal is of the opinion that the applicant has proved that the accident occurred due to rash and negligent driving of Motorcycle No. GJ-32-AB-8786 by Opponent No.1. It is pertinent to note that though the learned advocate for the opponent No.3 has disputed negligence regarding the occurrence of the accident, the opponents have not led any ocular as well as documentary evidence to substantiate such defence or to rebut the evidence adduced by the claimant. Opponent No.1, the driver of the motorcycle, who was material witness to the accident, has not stepped into the witness box nor the opponent No.3 has examined him and therefore adverse inference is required to be drawn against them. The negligence is proved on the touchstone of preponderance of probabilities. Accordingly, Issue No.1 is answered in the affirmative.

**Issue No.2**

- 15] The next important question that requires determination is the just, fair and reasonable amount of compensation to be awarded to the applicant. The applicant has stated in her affidavit that at the time of the accident, she was 39 years old and earning ₹15,000/- per month by doing the work of Beauty Parlour. However, in order to determine the income of the applicant, it is an admitted position that, no documentary evidence such as income certificate, bank statement, account books or any other supporting material has been produced on record to substantiate the said income. A mere assertion in the claim petition or in the affidavit, without any corroborative evidence, is not sufficient to establish the income claimed. The burden squarely lies upon the claimant to prove her income by cogent and reliable evidence. At the same time, it cannot be ignored that a claimant engaged in Parlour work may not be expected to maintain strict accounts or formal documentary proof of income. Therefore, in the absence of documentary evidence, the Tribunal is duty-bound to assess the income on a reasonable, just and legal basis. In the present case, considering the nature of work performed by the claimant and the relevant Government Notification issued by the Labour and Employment Department prevailing at the time of accident, the occupation of the claimant deserves to be treated at par with that of a skilled labourer. As the accident is occurred on 25.01.2023 and as per the minimum wages applicable during the relevant period i.e., from 01.10.22 to

31.03.23, the monthly wage of a skilled worker for 26 working days was ₹9,655/-. Accordingly, the monthly income of the applicant is assessed at ₹9,655/-. Further, in view of the law laid down by the Hon'ble Supreme Court in *National Insurance Co. Ltd. v. Pranay Sethi*, addition towards future prospects is mandatory while computing compensation. Considering that the applicant was aged 38 years at the time of accident, an addition of 40% towards future prospects is required to be made. Thus, 40% of ₹9,655/- i.e., ₹3,866/- is added, making the monthly prospective income ₹13,531/- (₹9,655/- + ₹3,866/-). Accordingly, the annual income for the purpose of computation comes to ₹1,62,372/- (₹13,531/- × 12). Hence, the income of the applicant for determining compensation is assessed at ₹1,62,372/- per annum.

- 16] That at the time of accident, applicant was 39 years of age and in respect of which the applicant has produced her Adhar Card at **Mark-4/7** in which her date of birth is mentioned as 01.01.1985 and the incident took place on 25.01.2023. Hence, considering it, the age of the applicant was 38 years on the date of accident. Therefore, 15 would be the multiplier as per Sarla Verma's case.
- 17] To prove disability, applicant has produced disability certificate at Exh.43 issued by Dr. Pravin M. Vainsh, M.S. (Ortho.), Veraval, assessing her permanent disability at 50% of the whole body. Relying upon the M.L.C. certificate as well as the said disability certificate, the learned advocate for the applicant has contended that the applicant has

suffered permanent partial disability to the extent of 50% of the whole body and is therefore entitled to compensation accordingly. However, it is pertinent to note that the doctor who issued the disability certificate has not been examined before the Tribunal. The disability certificate, though produced on record, has not been duly proved through the oral evidence of its author. Therefore, the Tribunal is required to assess the functional disability on a reasonable basis keeping in view the nature of injuries, treatment and overall facts of the case. Further, it is significant to note that, the learned advocate for the applicant has passed pursis at Exh.46 stating that, he has no objection if 25% permanent disability of the whole body is assessed. In view of the aforesaid facts, and considering the nature of injuries and the pursis passed by the learned advocate for the applicant, this Tribunal finds it just, proper and reasonable to assess the permanent functional disability of the applicant at 25% of the whole body. Thus, ₹1,62,372/- × 25% × 15 = ₹6,08,895/-. Hence, the applicant is entitled to ₹6,08,895/- towards loss of future income.

- 18] It clearly emerges from the record that the applicant has sustained permanent impairment. As discussed herein-above, due to the accident in question, the applicant suffered serious injuries which have resulted in permanent disablement affecting her earning capacity and normal life. Though the applicant has not produced any documentary evidence to substantiate the expenditure incurred towards transportation, special diet or attendant charges, she has

placed on record consolidated medical bills at Exhs.37 and 39 to 42. The said bills are supported by prescriptions and medical papers and, therefore, the applicant is entitled to reimbursement of the said amount. Ld. Advocate for the applicant has filed consolidated medical bills and reports at Exh.37 of Rs.5,46,560/-. Considering the nature and gravity of the injuries sustained, the extent of permanent functional disability accepted at 25% of the whole body, the period of treatment and hospitalisation and the submissions advanced by the learned Advocates appearing for the respective parties, this Tribunal finds that the applicant is entitled to compensation under the following heads:

<b>Sr. No.</b>	<b>Amount (Rs.)</b>	<b>Head</b>
1	6,08,895/-	Future Loss of Income.
2	5,46,560/-	Medical expenditure.
3	10,000/-	Pain, Shock and Suffering.
4	9,655/-	Actual Loss of Income. (1 month)
5	15,000/-	Transportation, special diet and loss of income of care-taker.
<b>6</b>	<b>11,90,080/-</b>	<b>Total amount of compensation</b>

### **Liability**

- 19] The applicant has joined the opponent No.1 as driver, opponent No.2 as the owner and opponent No.3 as insurer of Motorcycle No. GJ-32-AB-8786. As decided in issue No.1 the opponent No.1 was the driver of the Motorcycle No. GJ-32-AB-8786 and applicant has produced R. C. book of Motorcycle No. GJ-32-AB-8786 vide **Exh.32**,

wherefrom it transpires that, at the time of accident, said motorcycle was registered on the name of opponent No.2. The applicant has produced insurance policy of said motorcycle vide **Exh.33**, insurance is mentioned from 03.05.2022 to 02.05.2023, hence, it covers the date of accident 25.01.2023. It is pertinent to note that, though the opponent No.3 has raised a defence regarding absence of valid and effective driving licence with the driver of the offending vehicle, no cogent or documentary evidence has been led by the Insurance Company to substantiate the said defence. The burden to prove breach of policy conditions lies upon the insurer, which has not been discharged in the present case. Therefore, adverse inference is required to be drawn against the Insurance Company and such defence cannot be accepted. No breach of policy conditions is proved by the insurer. It is proved that, opponent No.1 is the driver, opponent No.2 is the registered owner of said motorcycle and said motorcycle was insured with opponent No.3, hence, all the opponents are vicariously liable. Considering the prevailing rate of interest and the settled legal principles governing motor accident claims, interest at the rate of 9% per annum is found to be just, fair and reasonable. Therefore, I hold that the opponents No.1, No.2 and No.3 are jointly and/or severally required to pay the amount of compensation to the applicant with interest @ 9% per annum. Hence, I answer issue No.2 accordingly and in view of the aforesaid, I pass the following order qua the issue No.3.

**ORDER**

- (1) The claim petition is hereby **partly allowed**.
- (2) The applicant is entitled to recover sum of **Rs.11,90,080/- (Rupees Eleven Lacs Ninety Thousand Eighty Only)** with the proportionate cost and with interest at the rate of 9% per annum, from the date of the claim petition till realisation from the opponents who are jointly and/or severally liable.
- (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 nationalised 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.3 shall scrupulously follow these directions of the Hon'ble High Court of Gujarat.

- (7) The Insurance Company shall deposit the amount in **Account Name : Motor Accident Claim Tribunal Aux., Veraval, Account No.40745290716 of the State Bank of India, Ifsc Code : SBIN0060050, MICR : 362002052 through NEFT or RTGS** and on such deposits being made, the insurance company shall submit a letter to the Registry of District Court 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.
- (8) The opponents shall bear their own costs of this petition.
- (9) Award be drawn accordingly in the above petition.

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

Place : Veraval.

Date : 10.04.2026.

**( Vikramsingh B. Gohil )**

Chairman

M. A. C. Tribunal (Main),

VERAVAL

Unique ID No.GJ01042