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IN THE MOTOR ACCIDENT CLAIM TRIBUNAL (MAIN),

AT : JAMNAGAR.

Motor Accident Claim Petition No.	24 of 2017
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Petitioner:-

1. Jiteshbhai Hirabhai Ashiyani,
Age about 34 years, Occupation : Business,
Resident of Moti Khavdi,
Ta/Dist. Jamnagar.

V E R S U S

Opponents :-

Owner and Insurance Company of Truck No.GJ-10-V-6112

**Legal Heir of Owner of Truck No.GJ-10-V-6112 -
Dharnantbhai Naranbhai Nandaniya....**

1. Naranbhai Samatbhai Nandaniya,
Resident of Sanjaynagar,
Behind Bapa's Maduli,Behind Salaya Chokdi,
Jamkhambhaliya, Dist, Devbhumi Dwarka.

[joined as per order passed below Exh.23]

2. The National Insurance Co.,
Office at City Arcade, Jamnagar.

Subject: - Petition to claim compensation of Rs.5,00,000/-
under section 166 of Motor Vehicle Act, 1988.

Appearance:-

Mr.D.A.Jivrajani, Learned Advocate for Petitioner.

None for Opponent No.1.

Ms.B.T.Karia, Learned Advocate for the Opponent No.2.

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

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1. Present claim petition has been filed by petitioner under section 166 of Motor Vehicle Act, 1988 seeking compensation of Rs.5,00,000/- along with interest on account of injuries received by him in road side vehicular accident involving vehicle being Truck No.GJ-10-V-6112.

2. The factual aspects of road accident for claiming compensation averred in the Claim Petition can be succinctly narrated as under ;

I. On 04/10/2016, Petitioner going by driving his Motorcycle in moderate speed and on left side of road and when he reached near sign board of village Padana, at that time, driver of Truck No.GJ-10-V-6112 came by driving his Truck in excessive speed and in negligent manner, and dashed with Motorcycle, resultant Petitioner fall-down and front wheel of Truck ran over Petitioner.

- II. It is averred that Petitioner was taken to Gokul Hospital where he was given treatment as an indoor patient for 10 days thereafter he was shifted to Maheshvari Hospital, wherein he remained as an indoor patient for 12 days as Petitioner has received fracture on ribs and thigh of right leg. At present also, the treatment of the claimant is going on.
- III. In background of the above facts, Petitioner has claimed that he was of 34 years at the relevant point time. He was doing business and earning Rs.10,000/- per month.
- IV. It is further stated by Petitioner that he had incurred expenses for medical treatment, special diet, transportation charges etc. and had also suffered substantial pain, shock and suffering and was compelled to remain bed-ridden. Due to chest injuries, Petitioner has difficulty in breathing, standing-up bending over and lifting weights. Due to leg injuries sustained in the road accident and disablement thereof, he is unable to attend day-to-day routine work, can not sit squat and that his earning capacity has also been adversely affected, and therefore, he has claimed for compensation of Rs.5,00,000/- with the interest at the rate of 18% against the opponents.
3. The summons of the Claim Petition were served upon the opponents.
- 3.1 The Opponent No.1 not contested the Petition in any manner.

3.2 The opponent No..2-Insurance Company of Truck appeared through its Learned Advocate Ms.B.T.Karia. who has filed written statement vide Exh.19 wherein, the opponent No.2 has denied all allegations and statements made in the Claim Petition. It is also contended that a Motorcycle is also involved in the accident and driver of said Motorcycle is sole responsible for the occurrence of accident. Alternatively it is contended that driver of said Motorcycle has also contributed for the occurrence of accident. It is denied that accident occurred due to rash and negligent driving of the driver of Truck No.GJ-10-V-6112. The age, injury, occupation and income of Petitioner denied by the opponent No.2 and requested to exonerate from liability to pay compensation.

4. In the background of such rival pleadings, this Tribunal was pleased to frame the following issues vide Exh.22.

ISSUE NOS.	ISSUE
1	Whether the Petitioner proves that he has sustained injuries due to rash and/or negligent driving of the driver of the vehicle involved in the accident ?
2	Whether the Petitioner proves that he entitled to get compensation ? If yes, what amount at what rate and from whom ?
3	What award ?

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

ISSUE NOS.	FINDINGS
1	In the affirmative.
2	In the affirmative and as per the amount quantified.
3	As per final order.

6. In support of the claim petition, following oral as well as documentary evidence were produced by the petitioner .

(A) Oral Evidence :-

Sr. No.	Name of witness	Exhibit
1	Affidavit of chief-examination of Petitioner	37

(B) Documentary Evidence :-

Sr. No.	Particulars	Exhibit
1	True Copy of FIR	29
2	True Copy of Spot Panchnama	30
3	Copy of RC Book of Truck No.GJ-10-V-6112	31
4	Copy of Insurance Policy of Truck No.GJ-10-V-6112	32
5	True Copy of charge-sheet	33
6	True Copy of Police statement of Jaydevsinh Amarsinh Vadher	34
7	True Copy of Police statement of driver of	35

	Truck No.GJ-10-V-6112	
8	True Copy of Insurance Policy of Truck No.GJ-10-V-6112	36
9	Treatment Papers of Petitioner	38
10	Disability Certificate	39
11	Medical Bills (Consolidated)	40

7. Learned advocate for Petitioner has not adduced further evidence and filed closing pursis vide Exh.41.

8. Learned advocate for Opponent No.1 has not adduced evidence.

9. Learned advocate for Opponent No.2 has examined witness Jaydevsinh Amarsinh Vadher vide Exh.43 and produced copy of driving licence of driver of Truck No.GJ-10-V-6112 vide Exh.44 and thereafter filed closing pursis vide Exh.45..

10. Learned advocate Mr.Jivrajani for Petitioner has argued that accident occurred due to sole negligence of driver of Truck No.GJ-10-V-6112 and at the time of accident, the said Truck was insured by the opponent no.2 – therefore, Insurance Company be held responsible to indemnify loss occurred to Petitioner.

It is further argued that, as per disability certificate at Exh.39 and consent thereof by both the parties, disability body as a whole is required to be considered to the tune of 19%. At the time of accident, Petitioner was 34 years old, doing business

and earned Rs.10,000/- per month. In last, prayed to allow claim petition as prayed for.

11. Learned advocate Ms.Karia for Opponent No.2 has argued that accident occurred during broad day light at 10:00 in the morning as Motorcycle was slipped and wheel of Truck was turn over to his chest, therefore, driver of Truck is not responsible in any manner for occurrence of accident. Petitioner has received whatsoever injuries due to his own negligence and therefore, more negligence should be attributed to the Petitioner.

It is further argued that Petitioner has not produced documentary evidence regarding income and therefore, notional income may be considered.

12. Having, gone through the pleading of respective parties, appreciation and consideration of evidence on record and hearing the submissions of learned counsel of Petitioner, following are the reasoning for deciding the issues involved in the matters.

::: R E A S O N S :::

Issue No. 1 :-

13. I have considered the rival contentions of the learned counsels for the parties and perused the records. Prior to proceeding with deciding the issue of negligence, it would be relevant to state here that the present petition being u/s 166(1)(c) of the MV Act, while deciding such petitions, summary procedure is to be followed and it is merely an inquiry under Section 168 of the Act. Even the strict rules of evidence are not

applicable during inquiry under these provisions. The Hon'ble Apex Court, in the case of **National Insurance Co. Ltd. v. Rattani, as reported in 2009(3) MhLJ (SC) 754**, laid down that *"The certified copy of the First Information Report can be looked into for the purpose of arriving at finding of fact under which circumstances the accident occurred."* Similar view is taken by the Hon'ble Bombay High Court in the case of *United India Insurance Co. Ltd. v. Sayaji Shind*, as reported in 2009(3) MhLJ 539, laying down that *Certified copy of the First Information Report and Spot Panchnama can be read in evidence without its formal proof."*

14. I have also gone through the FIR and Panchnama of place of accident as well as testimony of Petitioner and Officer of Insurance Company. The validity, admissibility and genuineness of these documents were not challenged by the Opponent.

15. In order to discharge this burden, Petitioner appeared in the witness box as PW-1 and tendered his affidavit of chief-examination at Exh.37. Petitioner also relied on the FIR at Exh.29, spot panchmama at Exh.30 and charge-sheet at Exh.33. On going through the FIR, spot panchnama and charge-sheet, it appears that in the accident two vehicles were involved and at the time of accident, Petitioner was driving the Motorcycle bearing registration No.GJ-10-AG-5007 and Truck dashed with his vehicle. Resultant, Petitioner received bodily injuries.

On perusal of the FIR at Exh.29 shows that complaint has been lodged against the driver of Truck for causing accident by driving his vehicle in rash and negligent manner.

On going through spot Panchnama at Exh.30, it appears that the accident took place near Padana village, near circle. Motorcycle bearing registration No.GJ-10-AG-5007 laying at the spot. Truck was not found at the spot.

On perusal of charge-sheet at Exh.33, it appears that driver of Truck No.GJ-10-V-6112 was held responsible for causing accident.

It is also required to note that accident occurred on 04/10/2016 and FIR in this regard lodged on 07/10/2016. Learned advocate Ms.Karia argued that Petitioner himself was tort-feasor as the Motorcycle was slipped and thereafter, wheel of Truck run over the body of Petitioner. It is not the case, where Truck hit the Motorcycle. Hence, more contributory negligence should be attributed on the part of Petitioner.

It is required to note that Petitioner has produced treatment Papers alongwith discharge summary at Exh.38, in which case history, it is specifically mentioned that “ *A/H/O:- RTA with accidental injury over chest and rt hip joint due to bike slipped and wheel of truck was turn over to his chest near Padana patiya at 10 am on 04/10/2016.*”

It is required to note that, case history was given by the brother of the Petitioner, immediately after occurrence of accident and there is no reason to not to believe it . Therefore, from said case history it appears that, at the time of accident, Petitioner was driving the Motorcycle bearing registration No.GJ-10-AG-5007.

As per Panchnama, there was Motorcycle lying on the road near a circle, and there was no sign of applying break. Truck was not there. In cross-examination, the Petitioner has admitted that Truck was taking turn and his Motorcycle was dashed with Truck on its cleaner side.

Under these circumstances, Petitioner being driver of Motorcycle bearing registration No.GJ-10-AG-5007 is found negligent to the extent of **50%**, whereas driver of Truck No.GJ-10-V-6112 is also found negligent to the extent of **50%** for causing accident. Hence, I answer this issue No.1 accordingly.

Issue No. 2 :-

16. As a natural consequence, and since having found issue No.1 in favour of petitioner and in the affirmative, it necessarily follows that the petitioner is entitled for the compensation. Now, we will proceed to determine the quantum of compensation and the liability to pay the awarded compensation.

(a) Income of injured: - Petitioner has pleaded that at the time of accident, he was earning Rs.10,000/- per month by doing buesiness. In support of the contention, Petitioner has not produced any evidence. Therefore, income suggested by the Petitioner side is higher one. Under this circumstance, considering the nature of work, age of Petitioner and year of accident as 2016, it would be just and appropriate to consider the income of the Petitioner at Rs.3,000/- per month which annually comes to **Rs.36,000/-**.

(b) Permanent Disability: - Petitioner has pleaded that due to the injuries sustained in the accident, he has become permanent disable. In order to prove the permanent disability, petitioner has produced Disability Certificate at Exh.49, issued by Dr. M.S.Dangar, who assessed permanent partial functional disability of Petitioner at 45% of right lower limb to the effect that shortens of Right lower extremity 10" of Right hip to the extent of 10%, restricted movement of Lumbosacral spine to the extent of 10% and restricted movement of Right hip joint to the extent of 25% and in total disability count at the rate of 45%.

It is required to note that to establish functional disability, Petitioner has not examined any medical expert, i.e. treating doctor or doctor who has issued disability certificate. Learned advocate for parties are agreed to assess the disability to the tune of 19% body as a whole. Under these circumstances, permanent partial functional disability of petitioner is assessed at **19%** qua body as a whole.

(c) Age of injured:- On the perusal of record, it transpires that Petitioner has produced treatment papers at Exh.38, wherein his age is mentioned as 34 years. Therefore, **34 years** age of Petitioner at the time of accident is to be considered.

(d) Multiplier applicable: - As per above discussion it is clear that at the time of accident, age of the petitioner was 34 year, as such multiplier applicable to the case of Petitioner is **16** as per the judgment of Hon'ble Supreme court in **Smt. Sarla Verma and others Versus Delhi Transport Corporation 2009 AIR (SC) 3104.**

(e) Loss of future income:- So, taking into consideration the annual income, permanent disability and applicable multiplier, amount of compensation payable under the head of loss of future income comes to **Rs.1,09,440/- (36000 x 19 % x 16).**

(f) Loss of actual income: - Considering the nature of injuries, duration of treatment, it will be reasonable to award **Rs.6,000/-** under this head.

(g) Medical Expenses:- On the perusal of record, it transpires that Petitioner has submitted medical bills. However, learned advocate for Petitioner has filed medical bills at Exh.40 to the extent of Rs.3,03,737/-, rounded it as 3,03,740/-. Therefore, in view of the above, petitioner is entitled for **Rs.3,03,740/-** under this head.

(h) Pain/shock and suffering:- Considering duration of treatment of petitioner as indoor patient, nature of injuries and permanent disability, petitioner is entitled for **Rs.15,000/-** under this head.

(i) Conveyance, attendant and special diet:- In view of the nature of injuries, duration of treatment, petitioner is entitled for **Rs.15,000/-** under this head.

Sr. No.	Head of Compensation	Amount
1	Loss of Future Income	Rs.1,09,440/-
2	Loss of Actual Income	Rs.6,000/-
3	Expenses incurred on treatment and medicine	Rs.3,03,740/-
4	Pain/ shock and suffering	Rs.15,000/-

5	Conveyance, attendant and special diet	Rs.15,000/-
T O T A L :-		Rs.4,49,180/-
LESS : 50% Negligence of Petitioner :-		Rs.2,24,590/-
FINAL AMOUNT :-		Rs.2,24,590/-

liability to pay the compensation :-

17. Learned advocate Ms.Karia for Opponent No.2 argued that driver of Truck No.GJ-10-V-6112 was not a paid and authorized driver of registered owner Jaydevsinh Amarsang and he sold the said Truck to Dharnantbhai. As and when vehicle sold out and handed over to subsequent owner, then Policy was lapse. Therefore, this Insurance Company is not liable to pay and learned advocate Ms.Karia has relied upon the deposition of Jaydevsinh Amarsang Vadher at Exh.43. Crux of his deposition is that he knew the Dharnantbhai Naranbhai Nandaniya and his Truck bearing No.GJ-10-V-6112 was purchased by his brother Odhubha Amarsang and after the death of Dharnantbhai Naranbhai Nandaniya, his brother had paid installments of loan of Truck. Said Truck was not transferred in the name of his brother.

On perusal of RC book of Truck No.GJ-10-V-6112 at Exh.31 and Insurance Policy of said Truck at Exh.32, it appears that against the name of owner, name of Dharnant Naranbhai Nandaniya is shown. Moreover, Opponent Insurance Company

has not produced any documentary evidence to prove the change of ownership on the date of accident.

It is required to note that an agreement to sell alone does not prove the transfer of ownership in Motor Accident Claims Tribunal cases, the registered owner, as per Registration Certificate (RC) records, remains liable until legal ownership transfer is finalized under Section 50 of the Motor Vehicles Act. Mere possession or an unregistered agreement does not absolve the original owner of third-party liability. As per definition of owner, under Section 2(30) of the Motor Vehicles Act, the "owner" is the person in whose name the motor vehicle is registered, regardless of who has physical possession. Therefore, registered owner of Truck No.GJ-10-V-6112 on the date of accident is liable to pay compensation.

As discussed above in issue No. 1, the present accident occurred due to contributory negligence on the part of driver of Truck No.GJ-10-V-6112.

On perusal of RC Book at Exh.31 and Insurance Policy at Exh.32, it appears that Opponent No.1 was owner and Opponent No.2 was insurer of Truck No.GJ-10-V-6112. Therefore, Opponent Nos.1 and 2, both are jointly and severally liable for payment of compensation to Petitioner.

Issue no. 3 :-

18. Having, decided issue no.1 and 2 in affirmative and in favour of petitioner, following final order is hereby passed.

FINAL = ORDER

- 1- Present Claim Petition is hereby **partly allowed**.

- 2- Petitioner is held entitled for compensation of **Rs.2,24,590/- (Rupees Two Lakh Twenty Four Thousand Five Hundred Ninety Only)** along-with proportionate costs and simple interest at the rate of 9% per annum from the date of petition till its realization to be paid by Opponent Nos. 1 and 2 jointly and severally.

- 3- It is further directed that compensation amount shall be deposited directly into the bank account maintained by this Tribunal (detail given below) by RTGS or NEFT mode within one month. And copy of payment advice be kept by Nazir, District Court Jamnagar and Insurance Company shall serve a copy of the same on the claimant/s or their Advocate as the case may be.

Name of Bank	Bank of Baroda, Lal Bungalow Branch, Jamnagar.
A/c. Number	58090100006648
Account Name	M/S.MOTOR ACCIDENT CLAIM TRIBUNAL
IFSC Code	BARB0LALJAM (Fifth Character from the beginning is zero)
MICR Code	361012008

- 4- It is further directed that Insurance Company shall comply the directions given by Hon'ble Supreme Court in Bajaj Alliance General Insurance Co. Vs. Union of India, Writ Petition (s)

(Civil) No. 534 of 2020 as well as directions given by Hon'ble High Court of Madras in Civil Misc. Appeal No.428 of 2016 decided on 11th March, 2016 titled as Divisional Manager, The Oriental Insurance Co. Ltd. Vs. Rajesh & Ors.

5- If compensation has been awarded and paid under section 140 of Motor Vehicle Act, than such amount of compensation shall be reduced from amount of compensation awarded by this order.

6- On depositing the aforesaid amount of compensation, deficit Court fees, if any, be deducted there from and thereafter, from the remaining amount, **40%** shall be paid to the Petitioners by direct transfer to the credit of the bank account of the petitioners by NEFT or RTGS after proper verification and thereafter, remaining **60%** of the compensation amount shall be deposited in the name of petitioners in a Nationalized Bank or in any Government Security of the choice of Petitioners for a period of Five years keeping nomination clause with a condition that no loan or advance would be admissible, but the Petitioners would be entitled to get periodical interest that may accrue on the said F.D.R as per rules.

7- The Petitioner is directed to furnish his bank particulars i.e. bank account number and branch, IFSC code of concerned Bank and copy of PAN Card before the Registry and thereafter, Registry is directed to make disbursement of the amount of compensation accordingly.

8- The Opponents shall pay costs of the Petitioner and shall bear their own costs.

9- Award is directed to be drawn up accordingly

10- Authenticated copy of award is directed to be sent to the Insurance Company (if any) through e-mail.

This order is pronounced and signed in the open Tribunal on this 27th day of March-2026 under my hand and seal.

Date: -27/03/2026
Place: - Jamnagar.
A J RAVAL/PS

(Nehalkumar Rajeshbhai Joshi)
M.A.C.T. [Main] &
Principal District Judge, Jamnagar
Code No.: GJ01318