

<b>Exhibit</b>	:	<b>40</b>
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Registered On	:	10/04/2019
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Duration	:	Y-07:M-01:D -09

**IN THE MOTOR ACCIDENT CLAIM TRIBUNAL (MAIN),**

**AT : JAMNAGAR.**

Motor Accident Claim Petition No.	77 of 2019
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**Petitioner:-**

1. Anil Bharatbhai Chauhan,  
Age about 42 years, Occupation : Garage,  
Resident of Elgan Society,  
Hapa, Ta/Dist. Jamnagar.

**V E R S U S**

**Opponents :-**

**Owner and Insurance Company of Chota Hathi bearing registration No.GJ-11-Z-2245 .....**

1. Sanjay Nanalal Tanna,  
Age : Adult, Occupation : Business,  
Resident of 'Balvi Krupa',  
Near Blood Bank, Somnath Bag,  
Una, District- Somnath.

2. The Oriental Insurance Co.,  
Office at 'Swagat', 2<sup>nd</sup> Floor,  
Opposite Hotel Regency,  
Jamnagar.

**Subject:** - Petition to claim compensation of Rs.3,50,000/-  
under section 166 of Motor Vehicle Act, 1988.

**Appearance:-**

Mr.N.P.Jethwa, Learned Advocate for Petitioner.

None for Opponent No.1.

Mr.B.D.Gosai, 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.3,50,000/- along with interest on account of injuries received by him in road side vehicular accident involving vehicle being Chota Hathi bearing No.GJ-11-Z-2245.

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

- I. On 27/11/2018, while Petitioner was going as a pedestrian on Jamnagar- Rajkot highway road at about 6:30PM. Driver of Chota Hathi No.GJ-11-Z-2245 came by driving his vehicle in excessive speed and in negligent manner,

and dashed with Petitioner. Resultant, Petitioner received tibia bone fracture on right leg, fracture on ankle bone, a hip joint fracture and fracture of the calf bone as well as injuries on the mandible bone in the face area, also suffered injuries on brain and spine and remained as an indoor patient at G.G.Hospital from 27/11/2018 to 08/12/2018, wherein operation was performed on 06/12/2018 and screw was fitted in the leg.

- II. In background of the above facts, Petitioner has claimed that he was of 42 years at the relevant point time. He was doing Garage work and earning Rs.8,000/- per month.
- III. 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 injuries suffered by him, his earning capacity has also been adversely affected, and therefore, he has claimed for compensation of Rs.3,50,000/- 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 has filed written statement vide Exh.17, wherein denied all averments of Petition and further contended that, if Tribunal reached on conclusion that driver of involved Truck is responsible for accident, then the vehicle was insured with Opponent No.2- Insurance Company and on behalf

of him Insurance Company is liable to pay compensation to Petitioner and finally they prayed to dismiss Petition with costs against him.

3.2 The opponent No..2-Insurance Company of Bolero appeared through its Learned Advocate Mr.B.D.Gosai, who has filed written statement vide Exh.13 wherein, the opponent No.2 has denied all allegations and statements made in the Claim Petition. 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 ;

<b>ISSUE NOS.</b>	<b>ISSUE</b>
1	Whether the Petitioner proves that he 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 ;

<b>ISSUE NOS.</b>	<b>FINDINGS</b>
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 :-**

<b>Sr. No.</b>	<b>Name of witness</b>	<b>Exhibit</b>
1	Affidavit of chief-examination of Petitioner	21

**(B) Documentary Evidence :-**

<b>Sr. No.</b>	<b>Particulars</b>	<b>Exhibit</b>
1	True Copy of FIR	25
2	Copy of Spot Panchnama	26
3	Copy of Injury Certificate	27
4	Copy of RC Book of Chota Hathi No.GJ-11-A-2245	28
5	Copy of Insurance Policy of Chota Hathi No.GJ-11-A-2245	29
6	Disability Certificate	30
7	Copy of Charge-sheet	31
8	Copy of Medical Case Papers	32

9	Copy of Medical Case Papers	33
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7. Learned advocate for Petitioner has not adduced further evidence and filed closing pursis vide Exh.35.

8. Learned advocate for Opponent No.2 has not adduced oral or documentary evidence and filed closing pursis at Exh.36.

9. Learned advocate Mr.Jethewa for Petitioner has filed written argument at Exh.37. Crux of the argument is that accident occurred due to sole negligence of driver of Chota Hathi No.GJ-11-A-2245 and at the time of accident, the said vehicle was insured by the opponent no.2, therefore, Insurance Company be held responsible to indemnify loss occurred to Petitioner. That at the time of accident, Petitioner was 42 years old, running a Garage and earned Rs.8,000/- per month. In last, prayed to allow claim petition as prayed for.

10. Learned advocate Mr.Gosai for Opponent No.2 has argued that accident occurred as Petitioner was crossing the road in negligent manner, hence, present accident occurred. Petitioner has received injuries due to his own negligence.

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

11. 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 :-**

12. 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."*

13. I have also gone through the FIR, Panchnama of place of accident, charge-sheet as well as testimony of Petitioner. The validity, admissibility and genuineness of these documents were not challenged by the Opponent.

14. In order to discharge this burden, Petitioner appeared in the witness box as PW-1 and tendered his affidavit of chief-

examination at Exh.21. Petitioner also relied on the FIR at Exh.25, spot Panchnama at Exh.26 and Charge-sheet at Exh.31. On going through the FIR, spot Panchnama and charge-sheet, it appears that in the accident only one vehicle was involved and at the time of accident, while Petitioner was crossing the road, at that time driver of Chota Hathi hit him. Resultant, Petitioner received fracture injuries.

On perusal of the FIR at Exh.25 shows that complaint has been lodged against the driver of Chota Hathi for causing accident by driving his vehicle in rash and negligent manner.

On going through spot Panchnama at Exh.26, it appears that the accident took place at Rajkot- Jamnagar highway road and it was 36 foot wide, accident occurred opposite Jackson Auto, road towards Hapa. At the spot Chota Hathi No.GJ-11-A-2245 was found in accidental condition and its front was damaged. As per case history mentioned in injury certificate at Exh.27, accident took place “when patient chross the road. Hit by Chota Hasthi Truck” .

Herein case on hand, Petitioner was going as pedestrian and crossing the road. On perusal of the entire facts and circumstances of the case, it appears that the accident took place due to rash and negligence driving on the part of driver of Chota Hathi No.GJ-11-A-2245. If driver of offending vehicle had taken a slight care to avoid the accident, unfortunate mishap could not have taken place, and therefore, driver of Chota Hathi No.GJ-11-A-2245 should be held to be negligent to the extent of **90%** for happening of accident. Further, while crossing the road on

highway, pedestrian should also take care and have to be vigilant, while crossing the road. Hence, **10%** contributory negligence of Petitioner is held. So, I answer this issue No.1 accordingly.

**Issue No. 2 :-**

15. 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.8,000/- per month by running a Garage. 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 2018, it would be just and appropriate to consider the income of the Petitioner at Rs.5,000/- per month which annually comes to **Rs.60,000/-**.

**(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.30, issued by Dr. M.S.Dangar, who assessed permanent partial functional disability of Petitioner at 85% of right lower limb to the effect that shortens of Right lower extremity 10" of Right and Left limb to the effect that shortens of Right lower extremity 1" at 10%, painful restricted movement of right knee joint 15%, 15% towards

restricted movement of right ankle joint, 15% towards painful restricted movement of right hip joint, 10% towards painful restricted movement of calf hip joint, 10% towards painful restricted movement of Lumbo Sacral spine and 10% for painful restricted movement of both jaws.

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 27% body as a whole. Under these circumstances, permanent partial functional disability of petitioner is assessed at **27%** qua body as a whole.

**(c) Age of injured:-** On the perusal of record, it transpires that Petitioner has not produced documentary evidence, but in cross-examination, Petitioner admitted his birth-date as 01/01/1977. Therefore, **41 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 41 year, as such multiplier applicable to the case of Petitioner is **14** 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.2,26,800/- (60000 x 27 % x 14)**.

**(f) Loss of actual income:** - Considering the nature of injuries, duration of treatment, it will be reasonable to award **Rs.10,000/-** under this head.

**(g) Medical Expenses:-** On perusal of record, it appears that petitioner has not produced medical bills. However, considering injuries suffered by him and treatment received by him, Petitioner is entitled to get **Rs.4000/-** towards medical expenses. This amount deserves to be allowed to petitioner under head of medical expenses.

**(h) Pain/shock & 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.

<b>Sr. No.</b>	<b>Head of Compensation</b>	<b>Amount</b>
1	Loss of Future Income	Rs.2,26,800/-
2	Loss of Actual Income	Rs.10,000/-
3	Expenses incurred on medicine	Rs.4,000/-
4	Pain/ shock and suffering	Rs.15,000/-
5	Conveyance, attendant and special diet	Rs.15,000/-
<b>T O T A L :-</b>		<b>Rs.2,70,800/-</b>
<b>LESS ; 10% Negligence of Petitioner :-</b>		<b>Rs.27,000/-</b>

<b>[in round figure]</b>	
<b>FINAL AMOUNT :-</b>	<b>Rs.2,43,800/-</b>

**liability to pay the compensation :-**

16. On perusal of RC Book at Exh.28 and Insurance Policy at Exh.29, it appears that Opponent No.1 was owner and Opponent No.2 was insurer of Chota Hathi No.GJ-11-Z-2245. Therefore, Opponent Nos.1 and 2, both are jointly and severally liable for payment of compensation to Petitioner.

**Issue no. 3 :-**

17. 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.2,43,800/- (Rupees Two Lakh Forty Three Thousand Eight Hundred 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 11<sup>th</sup> 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 27<sup>th</sup> day of March-2026 under my hand and seal.

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

Date: -27/03/2026

Place: - Jamnagar.

A J RAVAL/PS