Exhibit	:	**62**
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IN THE MOTOR ACCIDENT CLAIM TRIBUNAL (MAIN),

AT : JAMNAGAR.

Motor Accident Claim Petition No.	192 of 2017

Petitioner:-

1. Umedsinh Tapubha Jadeja,

   Age about 38 years, Occupation : Rickshaw Driving,

   Resident of Dharar Nagar,

   Near Power House, Jamnagar.

V E R S U S

Opponents :-

Owner and Insurance Company of Bolero No.GJ-01-AU-8704

1. Maheshbhai Vrajlalbhai Babariya,

   C/o.Ravi Enterprise,

   26/27 Digvijay Plot, Jamnagar.

2. The Oriental Insurance Co.,

   Office at ‘Swagat’,

   Ambar Talkies Road, Jamnagar.

Subject: - Petition to claim compensation of Rs.3,00,000/- under section 166 of Motor Vehicle Act, 1988.

Appearance:-

Mr.D.A.Jivrajani, 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.3,00,000/- along with interest on account of injuries received by him in road side vehicular accident involving vehicle being car being Bolero No.GJ-01-AU-8704.

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

   I. On 19/04/2016, while Petitioner was walking on the road near Vasai village, at that time, driver of Bolero No.GJ-01-AU-8704 came by driving his vehicle in excessive speed and in negligent manner, and dashed with the Petitioner. Resultant, Petitioner received fracture injuries and admitted in G.G. Hospital and then was referred to Dr.Rupareliya’s Hospital and he remained there as an indoor patient for six days.

II. In background of the above facts, Petitioner has claimed that he was of 38 years at the relevant point time. He was Rickshaw driver and earning Rs.7,000/- per month.

III. It is further stated by Petitioner 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 head injuries, memory of Petitioner was diminished and he is feeling constant dizziness and has difficulty looking up. Due to ear injury, he has buzzing sensation in the ear and he suffered fracture injury on right shoulder, therefore, he can not raise his right hand and can not lift even normal weight with that hand and his earning capacity has also been adversely affected, and therefore, he has claimed for compensation of Rs.3,00,000/- 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 Bolero appeared through its Learned Advocate Mr.B.D.Gosai, who has filed written statement vide Exh.14 wherein, the opponent No.2 has denied all allegations and statements made in the Claim Petition. It is denied that accident occurred due to rash and negligent driving of the driver of Bolero No.GJ-01-AU-8704.

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 ;

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	35
2	Deposition of Dr.Mensibhai Sajanbhai Dangar	41
3	Deposition of Dr.Dineshbhai Kanjibhai Gajera	45
4	Deposition of Dr.A.D.Rupareliya	58

(B) Documentary Evidence :-

Sr. No.	Particulars	Exhibit
1	Disability Certificate issued by Dr. M.S.Dangar	42
2	Disability Certificate issued by Dr.Dinesh Gajera	46
3	Copy of FIR	48
4	Copy of Spot Panchnama	49
5	Copy of RC Book of Bolero No.GJ-01-AU-8704	50
6	Copy of Insurance Policy of Bolero No.GJ-01-AU-8704.	51
7	Discharge Summary by Ruparelia Neuro Hospital, Trauma Centre, Jamnagar	52
8	Medical Bills	53

7. Learned advocate for Petitioner has not adduced further evidence and filed closing pursis vide Exh.59.

8. Learned advocate for Opponent No.2 has not adduced oral or documentary evidence and filed closing pursis at Exh.60.

9. Learned advocate Mr.Jivrajani for Petitioner has argued that accident occurred due to sole negligence of driver of Bolero No.GJ-01-AU-8704 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.

It is further argued that, as per depositions of doctor- PW-2 namely Dr.Dangar at Exh.41, Petitioner has received 20% disability body as a whole and as per say of PW-3, Dr.Gajera at Exh.45, Petitioner has received 18% neurological disability body as a whole. And as per deposition of Dr.Ruparelia at Exh.58, Petitioner has incurred Rs.49,213.63 PS towards his treatment. At the time of accident, Petitioner was 38 years old, doing Rickshaw driving and earned Rs.7,000/- 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 walking on the middle of the road and due to his negligence act, present accident occurred. 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.

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 and Panchnama of place of accident 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.35. Petitioner also relied on the FIR at Exh.48 and spot panchmama at Exh.49. On going through the FIR and spot panchnama, it appears that in the accident only one vehicle was involved and at the time of accident, Petitioner was walking and Bolero hit him. Resultant, Petitioner received bodily injuries.

On perusal of the FIR at Exh.48 shows that complaint has been lodged against the driver of Bolero for causing accident by driving his vehicle in rash and negligent manner.

On going through spot Panchnama at Exh.49, it appears that the accident took place at Jamnagar- Khambhaliya highway road and it was 20 to 25 foot wide, accident occurred at the corner,that is, at the end of road. No vehicle was found at the spot.

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 Bolero No.GJ-01-AU-8704. If driver of offending vehicle had taken a slight care to avoid the accident, unfortunate mishap may not be occurred. Often it has been noticed that pedestrian took causal approach while crossing the road. As per Panchnama, where the accident took place, there is 25 feet wide road. The pedestrians are required to adopt careful approach while crossing the road on highway, hence Petitioner is also negligent.

14. 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 Bolero No.GJ-01-AU-8704. If driver of Opponent No.1 had taken a slight care to avoid the accident, unfortunate mishap could not have taken place, and therefore, driver of Bolero No.GJ-01-AU-8704 should be held to be negligent for happening of accident to the extent of **90%** and Petitioner should be held liable for **10%** as contributory negligence. As per the FIR at Exh.48, the accident took place when he was crossing the road. Hence, I answer 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.7,000/- per month by Rickshaw Driving. 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 became permanent disable. In order to prove the permanent disability, petitioner has examined Dr.Mensibhai Sajanbhai Dangar at Exh.41. Crux of his deposition is that he issued disability certificate for movement of right hand to the extent of 20%. In cross-examination, he admitted that Petitioner not treated by him. Witness has produced disability certificate at Exh.42. It is true that generally a permanent disability of one limb is considered body as a half.

Under these circumstances, disability of Petitioner for the painful restricted movement of right shoulder should be assessed to the extent of **10%** body as a whole as per deposition of the doctor.

(b.1) To prove the neurological disability, Petitioner has examined Dr.Dinesh Kanjibhai Gajera at Exh.45. Crux of his deposition is that he examined the patient, who was undergone treatment at Rupareliya's Hospital from 19/04/2016 to 24/04/2016. On examining the treatment papers of patient, following injuries found ;

I. Left temporal 4MM subdural hemorrhage.

II. Right Temporal bone fracture.

III. Both sphenoid wins fracture.

IV. Right pterygoid plate fracture.

V. Ethmoid bone fracture.

VI. Left frontal fracture.

He further deposed that on examined the x-ray, it found that patient has having Right clavicle and fracture on right scapula. Patient has stated following complaints during the examination ;

i. Frequent mild to moderate headache on the left side.

ii. Feels dizziness when going in the sunshine.

iii. complaint about forgetfulness.

iv. Felt weakness.

v. Difficulty in hearing in the right ear.

He further deposed that after examining him, he issued disability certificate and assessed his disability at the 18% . Witness has produced disability certificate at Exh.46.

In cross-examination, he admitted that he has not taken x-ray at the time of examined the patient and not examined the treatment papers of G G Hospital. Witness has explaind the disability break-up in the following way ;

A. Headache 3% out of 100.

B. Vertigo 6% out of 100, that is, 6.82% out of remaining 97.

C. For Memory loss 5% out of 100, that is, 4.55% out of remaining 91.18.

D. For Behaviour and weakness 4% out of 100, that is, 3.46% out of remaining 86.63.

E. Deafness of the right ear is 9% out of 100, that is, 7.48 out of the remaining 83.17. Thus, out of total 24.31%, he given a permanent disability certificate of 18%. There is no objective meter to check above all disabilities.

It is required to note that Dr.Gajera deposed that due to accident, Petitioner has received Left temporal 4MM subdural hemorrhage, Right Temporal bone fracture, Both sphenoid wins fracture, Right pterygoid plate fracture, Ethmoid bone fracture and Left frontal fracture and due to aforesaid injuries, Petitioner has permanent difficulty of Headache, Vertigo, Memory loss, change of behaviour and weakness and deafness of the right ear.

It is required to note that neurological disability can not be altered as it stays all through the life. Therefore, neurological disabilities should be count as **18%** as opined by Dr.Gajera.

Thus, disability will have to be taken 18% neurological disability and 10% physical permanent disability. Therefore, total disability would have to be taken at **28%** qua body as a whole.

(c) Age of injured:- On the perusal of record, it transpires that Petitioner has produced discharge summary at Exh.52,wherein his age is mentioned as 38 years. Therefore, **38 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 38 year, as such multiplier applicable to the case of Petitioner is **15** 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.1,51,200/- (36000 x 28 % x 15).**

(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 vide Exh.53 for Rs.49,213.63 PS. To prove medical bills, Petitioner has examined Dr.Arvindbhai Dhanjibhai Ruparelia at Exh.58. Crux of his deposition is that patient was admitted on 19/04/2016 and was hospitalized till 24/04/2016. On 24/04/2016, bill of Rs.35,000/- was issued and other bills of Exh.53 are as per his prescribed by him and same was issued by medical store of hospital and total amount of bill is Rs.49,213.63 PS. Therefore, in view of the above, petitioner is entitled for medical expenses in round figure to the extent of **Rs.49,220/-.**

(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.1,51,200/-
2	Loss of Actual Income	Rs.6,000/-
3	Expenses incurred on treatment and medicine	Rs.49,220/-
4	Pain/ shock and suffering	Rs.15,000/-
5	Conveyance, attendant and special diet	Rs.15,000/-
T O T A L :-		Rs.2,36,420/-
LESS : 10% Negligence of Petitioner :- [in round figure]		Rs.23,650/-
FINAL AMOUNT :-		**Rs.2,12,770/-**

<u>liability to pay the compensation :-</u>

17. On perusal of RC Book at Exh.50 and Insurance Policy at Exh.51, it appears that Opponent No.1 was owner and Opponent No.2 was insurer of Bolero No.GJ-01-AU-8704. Therefore, Opponent Nos.1 and 2, both are jointly and severally liable for payment of compensation to Petitioner.

<u>Issue no. 3 :-</u>

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

F I N A L = O R D E R

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

2- Petitioner is held entitled for compensation of **Rs.2,12,770/- (Rupees Two Lakh Twelve Thousand Seven Hundred Seventy 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.

(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