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			4	5	26

**BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL  
(AUX.) AT VANTHALI**

**M.A.C.P. No.14 of 2021**

*Exh. :*

**CLAIMANT :**     **Richaben D/o. Durgashankar Pandya**  
**W/o. Jayeshbhai Dave**  
(Age:32 years, Occupation: Handicraft)  
Residing At: Beside Khodiya Temple,  
Shiv Park Society, Bantva,  
Tal. Manavadar,  
District Junagadh.

**VERSUS**

**OPPONENTS:**

**[Driver-Owner and Ins. Co. of Car No. GJ.04.CJ.6746]**

- (1) **Owner : Jayeshbhai Bharatbhai Dave**  
Age: 34,  
Occupation : Business,  
Residing At: Beside Khodiya Temple,  
Shiv Park Society, Bantva,  
Tal. Manavadar,  
District Junagadh.
- (2) **Insurer : Chola Mandlam H.S. General  
Insurance Co. Ltd.**  
Notice through Manager shree,

Ahmedabad Rural,  
At. Optiona Building, Second Floor,  
Opp. Hotel Nest, C.G. Road,  
Ahmedabad.

**Claim petition for compensation of Rs.38,25,000/-  
under Section-166 of Motor Vehicle Act.**

**APPEARANCE:**

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Mr. R.L.Hirpara, Ld. Advocate for the claimant.  
Mr. P.M.Hirpara, Ld. Advocate for the opponent no.2.  
No one has appeared on behalf of opponent no. 1.  
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**:: J U D G M E N T ::**

- 1) The claimant has filed the present claim petition under Section 166 of M.V.Act, seeking compensation of Rs. 38,25,000/- (Rs. Thirty Eight Lakhs Twenty Five Thousand Only) for the injuries sustained by the claimant above named, in vehicular accident.
- 2) The factual aspects of road accident for claiming compensation averred in the Claim Petition can be succinctly narrated as under:
  - (I) On 30.07.2021, the applicant, her husband i.e. opponent no.1, her brother-in-law Devangbhai and her minor daughter Aaradhya, were proceeding from their home to Porbandar in car No. GJ-04-CJ-6746 owned by opponent no. 1 in the afternoon. Deceased Devangbhai was driving

the car and when their car reached Krishna Hotel on the National Highway Road going from Ranavav-Porbandar, due to the negligence of the driver, the car dashed with the iron railing of the divider and fell into roadside drain.

- (II) As a result of this accident, claimant suffered fracture injuries on both legs, a deep cut above the right eye reaching down to the bone, resulting in 21 stitches, internal bruising and several scrapes across his body.
- (III) In the present accident the driver Devangbhai died on the spot and opponent no.1 also suffered serious injuries and minor Aaradhya also suffered serious injuries and died at Ranavav Government Hospital during treatment. A complaint in this regard has been registered against Devangbhai on the same day. The First Information Report of the above noted road accident was registered at Ranavav Police Station vide CR No. 11218015210580/2021.
- (IV) It is averred that operation was performed on her both legs and rod and screw were fitted.
- (V) In background of the above facts, the claimant has claimed that he was of 32 years at the relevant time and earned about Rs.4,00,000/- per year by doing Handicraft business and she

was proficient in this business and if not sustained injuries she can more develop this business and will earn Rs.8,00,000/- per year.

(VI) She has further averred 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. As an aftermath of the injuries sustained in the road accident and disablement thereof, the claimant is unable to do day-to-day routine work and therefore, she has claimed above stated compensation with 12% interest.

- 3) The summons of the claim petition were served upon the opponents. Resultantly, the opponent no.2 has appeared through Id. Advocate Mr.P.M.Hirpara and has placed Written Reply vide **Exh:12**. By way of this Written Reply, he has denied most of the facts mentioned in the claim petition and stated that the the present claimant is not entitle for any compensation due to breach of policy terms and non compliance of provisions of M.V.Act; the driver of the car was not holding valid license at the time of the accident; stated that the statements made in the application like age, income of the applicant, time place and date of accident, involvement of Vehicle No. GJ-4-CJ-6746 in the accident, names and address of driver, occupation and income of the applicant, nature of injuries sustained by the

applicant, hospitalization, treatment, expenses toward treatment, attendant, nutritional and other expenses are not within its personal knowledge hence denied; the claimant is more excessive exorbitant and exaggerated and not entitled for the claim of Rs.38,25,000/-; Hence prayed to reject the present claim petition. While summons-notice was served upon opponent no. 1 but he neither appeared nor filed any written objection. He also did not produce any evidence in support of his defense, hence his right to produced written statement and evidence were closed.

- 4) The Tribunal upon the pleadings of the parties, framed the following issues vide **Exh:19**.

**:: I S S U E S ::**

1. Whether the applicant proves that he/she sustained injuries due to the rash and negligent driving on the part of driver-opponent No.1 of the vehicle involved in the accident ?
  2. Whether the applicant is entitled to get compensation ? If yes, what amount and from whom ?
  3. What Award and Order ?
- 5) The findings to the above issues are as under :
- (1) In affirmative.
  - (2) As per final order.
  - (3) As per final order.
- 6) In support of the claim petition, the claimant has laid the

following oral and documentary evidence:

<b>Sr. No.</b>	<b>Oral Evidence</b>	<b>Exh./ Marks</b>
1	Affidavit of examination-in-chief of the claimant	29
2	Deposition of Dr. Chndrakant J. Nanavati through court commissioner.	38
<b>Sr. No.</b>	<b>Documentary Evidence</b>	<b>Exh./ Marks</b>
1	Disability Certificate	14
2	Photo of the claimant	15
3	Payment Receipt	16
4	Bill of Yogi Studio	17
5	Copy of FIR	20
6	Copy of Panchnama	21
7	Case paper of Civil Hospital	22
8	Copy of Driving License of Devangbhai Dave	23
9	Copy of R.C. Book of Car No. GJ-04-CJ-6746	24
10	Copy of Insurance Police of Car No. GJ-04-CJ-6746	25
11	Statement of opponent no.1 before police	26
12	Facial Disfigurement Report	27
13	Copy of PAN Card of the claimant	40

14	Copy of Aadhar Card of the claimant	41
15	Copy of Income Tax Return of claimant for Assessment year 2019-20	42
16	Copy of Income Tax Return of claimant for Assessment year 2020-21	43
17	Copy of Income Tax Return Acknowledgment of claimant for assessment year 2021-22	44

7) Herein the case on hand, opponent no. 1 and 2 have not adduced and oral or documentary evidence. Applicant and Ld. Advocate for the opponent no.2 have jointly filed Closing Pursis vide **Exhs:45**. This Tribunal has taken into consideration the written argument of claimant produced at Ex.46 and written argument of opponent no.2 produced at Ex.47 and heard ld. Advocates for both the parties at length. Ld. Advocate for the claimant has relied upon following case laws:

1. Kiran Vs. Divisional Manager, United India Insurance Col Ltd., reported in 2025 ACJ 2748.
2. Anjali and others Vs. Lokendra RAthod and others, reported in 2023 ACJ 637.
3. Nidhi Bhargava and others Vs. National Insurance Col Ltd. and others, reported in 2025 ACJ 1126.
4. Pandurang Narayandas Sarada Vs. Subhash Gopal Changale and others, reported in 1989 ACJ 879.
5. M. Seetharama Vs. Manager, Future Generali India

Ins. Co. Ltd. and others, reported in 2025 ACJ 1084.

6. Anoop Maheshwari Vs. Oriental Insurance Col Ltd. and others, AIR 2025 Supreme Court 4099.

While Ld. Advocate for the opponent no.2 has relied upon following case laws :

1. Rajkumar Vs. Jay Kumar & Anr., reported in 2010 Legal Eagle (SC) 812.
2. Harshadray Babulal Kadiya Vs. Akhilesh Dharmjit Tiwari & Ors., Hon'ble High Court of Gujarat, First Appeal No. 1741/2024.
3. United India Insurance Company Ltd. Vs. Kirankumar Chandulal Parmar & 1 other, Hon'ble High Court of Gujarat, First Appeal No. 2877/2019.
4. The New India Assurance Co. Ltd. Vs. Amarbhai Tejabhai Dafda & 2, Hon'ble High Court of Gujarat, First Appeal No. 796/1990.

All the authorities cited by both sides have been carefully perused and duly considered.

8) **Issue No.1**  
**Negligency:**

It is settled position of law that, while deciding the point of negligence, Tribunal has to borne in mind that, negligence issue in claim petition under Section 166 of the Motor Vehicles Act is to be decided only on the touch stone of preponderance of probability and not beyond the reasonable doubts. The above position of law is laid down by the Hon'ble Apex Court in the following cases:

- (i) *Bimladevi vs. H.R.T.C., AIR 2009 SC 2819.*
- (ii) *Parmeshwari Devi vs. Amirchand, (2011) 11 SCC 635.*

Herein the present case, the claimant – Richaben

Jayeshbhai Dave has been examined to prove the case of her side vide **Exh:29**. She has reiterated the facts as mentioned in the claim petition and further stated that in the present accident she sustained fracture injuries on both legs and remain 18% permanent disability in right leg and 17% permanent disability in left leg, hence she remained 32% permanent disability body as a whole and her face is disfigured and remained 10% permanent disability which has become very painful and difficult for her to walk, sit down, stand up, lift objects, or climb stairs. She is struggling with even her basic daily routines. She prayed for compensation of Rs.38,25,000/- with 12% interest from opponent no.1 and 2 and produced relevant documents in the present claim petition. The claimant has been cross-examined by the opponent no.2 – Ins. Co. In the said cross-examination, the claimant has first stated that she still file Income Tax Return but after that she stated that she has filed last return at the time of accident and after that she never file any return. Apart from this nothing contrary facts came out. The driver of the Car has expired in the present accident and the Insurance Company had not examined the opponent no. 1 owner of the offending vehicle, who was traveling in the said Motor Car during the accident and who has filed the complaint for negligent driving against the driver of the Car. It is cardinal principal of law that unless the tort-feasor is examined by the insurance company adverse inference is

required to be drawn against the tortfeasor. While looking to the copy of the police papers such as an FIR at **Ex.20**, it clearly suggests that, the FIR has been filed against Devang Bharatbhai Dave who was the driver of vehicle bearing RTO Registration No. GJ.04.CJ.6746 for the rash and negligent driving and causing accident dashing the Car with railing of the divider and descended the car into the roadside drain dash, and thereby causing injuries to the claimant. Perusing the copy of Panchnama produced by the claimant vide **Ex.21**, it appears that, the accident has occurred on bridge of Rajkot-Porbandar National highway near Asaba pir *patiya*, it also appears that iron railing was bend and the Car No. GJ-04-CJ-6746 was lying under the bridge and signs of impact are visible on the front section of the four-wheeler and front portion like driver side, bonate, parts of engine, dash board, head light, gate of driver side, windshield were severally damaged, and red stain mark present at both seats of the car. Looking to the Medical Paper at **Ex.22**, it appears that, the claimant has sustained fracture injury on his legs and had taken treatment as an indoor patient from 31/07/21 to 05/08/21. Considering the FIR and Panchama it appears that present accident was occurred on the open road. Moreover, the claimant in his examination-in-chief has stated that the present accident has occurred due to the negligence of the opponent no.3 i.e. the driver of Car and in this accident she sustained fracture injury in his both legs and face. Going

through the record, it appears that, the driver of the Car has died in the present accident and opponent no.1 did not remain present to raise his defence and opponent no.1 himself has filed the FIR for the present vehicular accident against the driver of the Car, therefore, case of the claimant gets more substance to consider the negligence on the part of the driver of Car. From evidence produced on record, It can certainly be said that if the driver of the Car had taken a little more care while plying on the road, the accident could not have occurred. Here in the present case the negligence of the driver of the Truck is found for the alleged accident. Hence, **I answer Issue No. 1 “in affirmative”.**

9) **Issue No.2:**

9.1 **Age:**

As mentioned in the claim petition by the claimant, she was aged about 32 years at the time of accident. To prove his submission, the claimant has produced copy of PAN card at **Ex.40** and aadhar card at **Ex.41**, in both documents her date of birth is mentioned as 26/09/1989 and the present accident had occurred on 30/07/2021. Hence from the material available on record, it can be said that the claimant was aged about 31 years, 10 Months at the time of accident. Hence, the age of claimant is considered as **32 years.**

9.2 **Multiplier:**

The age of the claimant is taken as around 32 years as discussed herein above. Considering the decision of *Sarla Verma vs. Delhi Transport Corporation, reported in 2009 (6) SCC 212*. The claimant is entitled for multiplier of 16.

### 9.3 Injury and Disability :

It is an admitted position that due to the accident in question, the claimant had sustained injuries as described in the Medical Case paper (Ex.22). Looking to the Disability Certificate (Ex.14), the doctor who has given the said disability certificate has opined that, due to this accidental injuries, claimant has lost 18% permanent physical impairment and loss of physical function of Rt. Lower Limb and 17% permanent physical impairment and loss of physical function of Lt. Lower limb and Whole Body Disability is @ 32%. Dr. Chandrakant J. Nanavati who gave the said disability certificate, has been examined by court commissioner Mr. K.B.Pipaliya vide Exh.38, in the said examination Dr.C.J.Nanavati admitted that he issued the said medical certificate and assessed 32% whole body disability of the claimant as per prevailing medical rules. Ld. Advocate for the opponent no.2 has made an endorsement below Exh.13 regarding no objection if the disability will be considered as 17%. As the Ld. Advocate for the Ins. Co. has accepted the same, therefore, looking to the observations of the Orthopedic Surgeon regarding disability and endorsement below Exh.13, it will be just and proper to consider total 17% Body as whole Disability.

Therefore, the same is considered for rest of discussion regarding calculation of economic of loss or loss of earning capacity.

**9.4 Income:**

According to submission of the claimant in the claim petition, he was earning Rs.4,00,000/- per year by doing handicraft work and she has also produced Income Tax Return for Financial years 2018-19, 2019-2020 & 2020-2021 vide **Exh. 42 to 44**. The last Income Tax return is produced by the applicant is for the Financial Year 2020-2021, which is produced vide Exh.44. While the present accident had taken place on 30/07/2021. Hence the last income proof of the claimant on record is Income Tax return for the financial year 2020-2021 i.e. Ex.44 in the said return her yearly income is Rs.4,24,870/-. Hence at the time of accident she was earning Rs.35405/- per month as income which is taken as her monthly income.

**9.5 Future Loss of Income including future prospective income:**

Ld. Advocate for the opponent no.2 in his argument at Exh.47, argued that even after the accidental injury, there is no decrease in the income of the claimant and Dr. Nanavati in his deposition admitted that due to the injuries the claimant doesn't face difficulty in her professional work i.e. handicraft work, hence earning capacity of the claimant is not reduced after the present accident then

claimant is not entitled for compensation under the head of loss of future income and only entitled for amount under the head of pain, shock and suffering and/or future enjoyment and expectancy of life. He further argued that the effect of the earning capacity ought to be judge in the light of the importance of the loss of permanently impaired in the occasion of profession or employment career of the injured person, the disability percentage by the Doctor ipso facto does not mean to loss that extent in the earning capacity or that he has sustained to that extent on the capacity to earn. For the said submission Ld. Advocate for the opponent has relied on the judgments of Hon'ble Apex court and Hon'ble High Court of Gujarat.

Learned Advocate for Opponent No.2 has contended that the claimant is not entitled to compensation towards future loss of income, and in support thereof has relied upon the judgment in *Rajkumar Vs. Jay Kumar & Anr.*, reported in 2010 Legal Eagle (SC) 812. However, in the said case the Hon'ble Apex Court has, in fact, recognized and awarded compensation under the head of loss of future earning. Therefore, the reliance placed by Opponent No.2 on the said judgment is misconceived and contrary to the ratio laid down therein.

Further, Learned Advocate for Opponent No.2 has placed reliance upon the judgments in *Harshadray Babulal Kadiya Vs. Akhilesh Dharmjit Tiwari & Ors.* (Hon'ble High Court of Gujarat, First Appeal No.1741/2024) and

*United India Insurance Company Ltd. Vs. Kirankumar Chandulal Parmar & Another* (Hon'ble High Court of Gujarat, First Appeal No.2877/2019). However, in the former case, the claimant was serving as a Branch Manager in State Bank of India, while in the latter case, the claimant was employed as a packer in the Gujarat State Board of School Textbooks. In both matters, the claimants' earning capacity had not been adversely affected, and evidence regarding their continued earnings after the accident was available on record. In contrast, in the present case, the claimant is neither a government servant nor has any cogent evidence of post-accident income been brought on record. In fact in the present case the claimant is self employed and engaged in handicraft activities, where income is directly dependent upon her physical capacity, mobility and ability to work continuously. Therefore, the facts and circumstances of the present case are materially distinguishable from those cited by Opponent No.2, rendering the said judgments inapplicable.

Learned Advocate for Opponent No.2 has also relied upon *The New India Assurance Co. Ltd. Vs. Amarbhai Tejabhai Dafda & Ors.* (Hon'ble High Court of Gujarat, First Appeal No.796/1990). However, in that case, the claimant was employed as a driver in the State Transport Department and had not suffered any actual financial loss in terms of salary, with supporting evidence to that effect being available on record. Thus, the factual matrix of the

said case is substantially different from that of the present matter, and accordingly, the said judgment is also of no assistance to Opponent No.2.

It is true that during his deposition, Dr. Nanavati stated that the claimant may not face total incapacity in performing handicraft work. But in the case of **Sandeep Khanuja Versus Atul Dande, reported in 2017 (O) AIJEL-SC 59667**, Hon'ble Apex court in para 13(iii) has held as under :

(iii) That the Doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

Hence Hon'ble Apex court has held that the evidence of the doctor who examined claimant or who assessed disability of the claimant can give evidence only in regard to the extend of disability only and loss of earning capacity will be assessed by the Tribunal with reference to the evidence available on record. In the present case there is no evidence which shows that the claimant is still earning as prior to the accident and her earning capacity is not reduced due to accidental injuries. Further in the cross-examination of the claimant at Exh.29 she denied the fact that her earning capacity is not reduced and she is doing work as prior to the accident.

At this stage it also pertinent to look the Judgment of Hon'ble Apex court in the matter **Sandeep Khanuja Versus**

**Atul Dande, reported in 2017 (O) AIJEL-SC 59667.** In this case at para 15 has held as under :

15. The crucial factor which has to be taken into consideration, thus, is to assess as to whether the permanent disability has any adverse effect on the earning capacity of the injured. In this sense, the MACT approached the issue in right direction by taking into consideration the aforesaid test. However, we feel that the conclusion of the MACT, on the application of the aforesaid test, is erroneous. A very myopic view is taken by the MACT in taking the view that 70% permanent disability suffered by the appellant would not impact the earning capacity of the appellant. The MACT thought that since the appellant is a Chartered Accountant, he is supposed to do sitting work and, therefore, his working capacity is not impaired. Such a conclusion was justified if the appellant was in the employment where job requirement could be to do sitting/table work and receive monthly salary for the said work. An important feature and aspect which is ignored by the MACT is that the appellant is a professional Chartered Accountant. To do this work efficiently and in order to augment his income, a Chartered Accountant is supposed to move around as well. If a Chartered Accountant is doing taxation work, he has to appear before the assessing authorities and appellate authorities under the Income Tax Act, as a Chartered Accountant is allowed to practice up to Income Tax Appellate Tribunal. Many times Chartered Accountants are supposed to visit their clients as well. In case a Chartered Accountant is primarily doing audit work, he is not only required to visit his clients but various authorities as well. There are many statutory functions under various statutes which the Chartered Accountants perform. Free movement is involved for performance of such functions. A person who is engaged and cannot freely move to attend to his duties may not be able to match the earning in comparison with the one who is healthy and bodily able. Movements of the appellant have been restricted to a large extent and that too at a young age. Though the High Court recognised this, it did not go forward to apply the principle of multiplier. We are of the opinion that in a case like this and having regard to the injuries suffered by the appellant, there is a definite loss of earning capacity and it calls for grant of compensation with the adoption of multiplier method, as held by this Court in *Yadava Kumar v. Divisional Manager, National Insurance Company Limited & Anr.*, 2010(5) Recent Apex Judgments (R.A.J.) 116 : (2010) 10 SCC 341:

Hence in the said matter The Hon'ble Apex Court held that while determining compensation for permanent disability, the decisive consideration is not merely the percentage of physical disability, but whether such disability has adversely affected the injured person's earning capacity. It observed that the MACT adopted an unduly narrow approach in concluding that a Chartered Accountant's 70% permanent disability would not impact his income merely because his work involved sitting. The Court clarified that a professional Chartered Accountant's work requires substantial mobility for attending clients, audits, taxation matters, and appearances before various authorities, and therefore restricted movement significantly diminishes professional efficiency and earning potential. Accordingly, where permanent disability materially impairs the practical discharge of professional duties, it results in definite loss of future earning capacity, and compensation must be assessed by applying the multiplier method.

In the present case the disability certificate at Exh.14, establishes that the claimant has sustained permanent disability in both legs due to fracture injuries. The certificate records that she faces difficulty in cross-leg sitting, squatting, walking long distances, climbing stairs, and performing day-to-day activities on account of pain, tingling and numbness in the right lower limb, along with limping. These functional limitations are significant in the

context of handicraft work, which ordinarily requires prolonged sitting in a particular posture, sustained physical effort and mobility for procurement of raw materials as well as for marketing and sale of finished products.

Due to the accidental injuries in both legs there has been a change in the lifestyle and working capacity of the claimant after the accident and that her capacity of working has certainly been reduced. Thus, although the claimant may still be able to carry out handicraft work to some extent, she cannot work with the same efficiency, continuity and output as prior to the accident. Consequently, her production capacity has reduced and her ability to travel for purchase of materials and sale of goods has also been adversely affected. In the case of a self-employed person, such reduction in functional capacity inevitably translates into reduction in earning capacity and income. Therefore, looking to the facts and circumstance of the present case and ratio laid down by Hon'ble Apex Court in the matter of **Sandeep Khanuja Versus Atul Dande, reported in 2017 (O) AIJEL-SC 59667**, it can be reasonably said that due to the permanent disability suffered in the accident, the claimant suffered decreased in the future income.

The learned Advocate for Opponent No.2 has relied upon the judgment of the **Hon'ble Apex Court in *Raj Kumar Vs. Ajay Kumar***, wherein it has been held that the Tribunal should not mechanically equate the percentage of

permanent disability with the percentage of economic loss or loss of earning capacity, and that the functional impact of the disability on the earning capacity of the injured must be assessed on the facts of each case. The said principle is well settled and is required to be applied while appreciating the evidence on record.

In the present case, the disability certificate at Exh.14 assesses the claimant's permanent physical disability at 32%, which is in the form of permanent physical impairment and loss of physical function, the said 32% disability has also been affirmed by the Doctor in his deposition at Exh.38. However, both the parties have fairly agreed to consider the disability at 17% to the body as a whole. Nevertheless, from the nature of injuries and the functional limitations recorded in the disability certificate, it clearly emerges that the claimant, who is self-employed in handicraft activities, faces difficulty in prolonged sitting, walking, mobility and performing day-to-day work, which directly affects her efficiency and productivity.

Further the claimant in Exh.1 and her Affidavit of examination at Exh.29, she has stated that due to accidental injuries her business of handicraft is stopped and she became unemployed and will not do any work or business in future and became 100% incapable for doing handicraft business. In her cross examination at Exh.29 prior she has stated that she is filing income tax return but after that she stated that after the accident she never filed

income tax return and Ld. Advocate for the opponent no.2 has not asked her for production of latest income tax return. Hence there is no evidence on the record which shows that the claimant is still earning income from the handicraft business and her earning capacity is not reduced due to present vehicular accident, hence it is also evident that the claimant is not rendered totally incapable of performing her work. She can still continue handicraft activities, though not with the same continuity, comfort and output as prior to the accident. Significantly, apart from the deposition of doctor, there is no cogent evidence on record to precisely establish the fact that earning capacity of the claimant is not reduced and she is earning as much as she was earning prior to the accident, there is no reliable material to show that her earning capacity has remained wholly unaffected after the accident.

Thus, the Tribunal is required to make a reasonable and pragmatic assessment of functional disability and its impact on earning capacity. Considering the age, nature of avocation and overall evidence on record, and bearing in mind the principle laid down by the Hon'ble Apex Court that economic loss should not be mechanically equated with medical disability, this Tribunal is of the view that it would meet the ends of justice to hold that the claimant has suffered reduction in earning capacity to the extent of 17%, corresponding to the agreed disability to the body as a whole arising out of the accidental injuries

which have resulted in partial functional disability.

The Ld. advocate for the claimant has relied upon the various judgments of the Hon'ble Apex Court and Hon'ble High Court of Gujarat. Looking to the Judgment of **Hon'ble Apex court reported in 2023 ACJ, 633**, in which Hon'ble Apex court granted 40 % income towards future prospects as there is a permanent disability. Further the **Hon'ble Apex Court in the case of Mohd. Sabeer @ Shabir Hussain Vs. Regional Manager, U.P. State Road Transport in para 18** has observed as under.

**Para 18**

*It is well settled position of law that in cases of permanent disablement caused by a motor accident, the claimant is entitled to not just future loss of income, but also future prospects. it has been reiterated by this Court in multiple instances that "just compensation" must be interpreted in such a manner as to place the claimant in the same position as he was before the accident took place.*

While the Hon'ble High Court of Gujarat in its Judgment in First Appeal No. 4525/2022, 4526/2022, 2326/2020, 2980/2018 & 2657/2014 also taking note of the Hon'ble Apex Court's Judgment in **National Insurance Company Ltd. Vs. Pranay Sethi and Others** and grant future prospective income. Therefore as discussed above as the Hon'ble Apex Court and Hon'ble High Court of Gujarat in its various judgments granted prospective income to the injured person who sustained permanent

disability in a vehicular accident. Hence, herein this case the claimant also received permanent disability in present vehicular accident. Hence, in the present case before me also prospective income is required to be granted.

This tribunal has quantified income of the claimant as Rs.35,405/- per month. As discussed above herein this case prospective income is required to be considered. The age of the claimant is proved as 32 years at the time of the accident and therefore, 40% of prospective income is required to be added in monthly income. Therefore, future prospective income would be  $\text{Rs.35,405/-} \times 40\% = \text{Rs.14,162/-}$  prospective income. Going by the age of the claimant at the time of the accident, multiplier of 16 would be admissible. Keeping in mind the permanent disability as 17%, the compensation under this head can be worked out at **Rs.16,17,866/-** [(Rs.35,405/- income+Future prospective income Rs.14,162) X 12 months X 17% disability of body as a whole X 16 multiplier].

#### **9.6 Actual Loss of Income:**

Considering the nature of injuries sustained by the claimant in the road accident which ultimately resulted into the permanent disability. Looking to the Case papers of Civil Hospital (**Ex.22**), she was admitted in the hospital from the period of 31/07/2021 to 05/08/2021 and procedure was performed on 01/08/2021. Considering all these aspects, it can be believed that she must have not

worked at-least for two months. Hence the actual loss of income is worked out to be **Rs.70,810/-**, [Rs.35,405/- x 2] and the same is accordingly awarded.

**9.7 Medical Expenditure :**

The claimant has not produced any medical bills. Looking to the medical case papers at Exh.22, it transpires that she has taken treatment in Government Hospital. Apart from this the claimant has not produced any evidence to prove medical expenses occurred due to accident. Thus, looking to the nature of injuries, more particularly grievous injuries like fracture and other bodily injuries, this Tribunal thinks it just and proper to award amount of **Rs. 10,000/-** under this head.

**9.8 Attendant, Special diets and Transportation Expenses:**

During the period of hospitalization and follow-up treatment, the claimant might have required help of attendant. Further, claimant might have incurred some expenses towards special diets, transportation charges, etc. The claimant has not produced any supporting documentary evidence in these regard. Therefore, it is just and proper to award **Rs. 15,000/-** towards Attendant, Special diets and Transportation expenses.

**9.9 Non-Pecuniary Loss including loss of amenities of life :**

Looking to nature of injury, the claimant might have undergone severe pain and suffering for considerable

period. The law values life and limb of a person in the free society, compensation of such pain and suffering cannot be weighted by the golden scale. Therefore, it is just and proper to award **Rs.10,000/-** towards Pain, Shock and Suffering including loss of amenities of life.

- 10) In view of the above discussion, the claimant is entitled for the following compensation under different heads.

<b>Amount in Rs.</b>	<b>Particulars</b>
Rs.16,17,866/-	Towards Future Loss of Income
Rs.70,810/-	Towards Actual Loss of Income
Rs.10,000/-	Towards Medical Expenditure
Rs.15,000/-	Towards Attendant, Transportation Expenses
Rs.10,000/-	Towards Pain & Shock Suffering etc
<b>Rs.17,23,676/-</b>	<b>Total Compensation</b>

- 11) **Interest:**

Considering the facts of the present case and considering the decision of Hon'ble Apex Court in case of **Kalpanraj and Anr vs. Tamilnadu State Transport Corporation, reported in 2015 (2) SCC 764**, it would be just and proper to award the interest @ **9%** per annum.

- 12) **Liability:**

As discussed above in issue No. 1, the present accident has occurred on account of negligence on the part of driver of

Car bearing RTO Registration No. GJ.04.CJ.6746. Owner of the said Car & Insurer of the said Car is joined as opponent no.1 & 2. Moreover, the claimant has produced a copy of R.C.Book of Car bearing RTO Registration No. GJ.04.CJ.6746 vide **Ex.24** in which name of opponent no.1 is mentioned as a registered owner. Hence at the time of the accident Jayeshbhai Bharatbhai Dave was the owner of the alleged Car. On perusal of insurance policy at **Ex.25**, it becomes clear that Car bearing RTO Registration No. GJ.04.CJ.6746 was insured with the opponent no.2 Cholamandalam MS General Insurance Col Ltd. during the period from 15/04/2021 to 14/04/2022. The accident has taken place on 30/07/2021. Therefore, there was a valid insurance policy for Car on the day of accident.

It is the defence of the insurance company that the driver of the Car i.e. deceased Devang B. Dave was not holding valid license on the date of the accident, but looking to the Driving License produced vide Exh.23, it reveals that deceased driver of the Car Mr. Devang B. Joshi was holding valid driving license at the time of the accident. So, claimant is entitled to recover the compensation from the opponent Nos.1 and 2 being owner and insurer of the vehicle Car No.GJ-04-CJ-6746 with interest at 9% per annum.

- 13) In view of the above facts and discussion made herein above, the opponents nos. 1 to 2 being owner & Insurers of the vehicles Car at the time of accident, they

are held liable to pay the amount of compensation jointly and severally to the claimant, together with proportionate cost. Hence, for answer of Issue nos. 2 & 3, following order is passed.

**:ORDER:**

- (I) The claim petition is hereby **allowed**.
- (II) The claimant is entitled to recover the amount of **Rs.17,23,676/- (Rupees Seventeen Lakhs Twenty Three Thousand Six Hundred Seventy Six Only)** with proportionate cost and with interest @ 9% per annum from the date of filing of the claim petition till its realization from the opponents no.1 & 2 who are jointly and severally liable.
- (III) The opponents shall follow the guidelines given in a case of *Hansagauri Prafulchandra Ladhani & othims v. Oriental Insurance Company Ltd. & Ors. [2007 ACJ 1897 (DB) Guj.]* by the Hon'ble High Court of Gujarat, with regard to the deduction of Income Tax.
- (IV) Opponents are hereby directed to deposit the aforesaid amount of compensation within one month from date of this order.
- (V) On deposit of the amount of compensation as noted herein-above, the opponents are directed to intimate this tribunal in a prescribed form via Email.
- (VI) The opponents shall deposit the full amount of compensation and shall not deduct tax under Section 194-a of Income Tax on the interest awarded by this

Tribunal as per law laid down by **Hon'ble Division Bench in case of The Oriental Ins. Co. Ltd V/s. Chief Income Tax Commissioner (TDS) being SCA NO. 4821.**

- (VII) On depositing the above award by the opponents in this Tribunal, the amount of Court fees stamp if recoverable on the awarded amount, be recovered from the awarded amount and the same be credited into Govt. Treasury.
- (VIII) Principal Amount of interim / ad-hoc compensation awarded under Section 140 of MV Act, if any, shall be deducted from finally awarded compensation.
- (IX) The order with regard to apportionment of the awarded amount be passed after deposition of the awarded amount by the opponents.
- (X) Registry/MACT department shall E-Mail an authenticated copy of the award to the E-mail account of the Insurance Company.
- (XI) Award to be drawn accordingly.

Signed and pronounced in open Court today on  
this **28<sup>th</sup> day of April, 2026.**

Date : 28/04/2026.

Place: Vanthali

**(Salimbhai Babulal Mansuri)**  
3<sup>rd</sup> Additional District Judge &  
M.A.C. Tribunal (Aux.),  
Vanthali.  
[Code No:GJ00698]