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Before the
MOTOR ACCIDENT CLAIMS TRIBUNAL (Aux)
District Court Kheda at Nadiad.

M.A.C.P. No. 614 of 2020.

APPLICANT :

Rehanabanu Firojkhan Pathan
Age : 33, Occupation: Labour work,
Residence : Andhaj, Ta. Nadiad, Dist. Kheda.

VERSUS

OPPONENTS :

Parties of Piaggio Rickshaw being No.GJ.07.YY.3108

- 1 Prakashbhai Gordhanbhai Talpada
Adult, Occupation : Driver,
Residence : City Jimkhana Mill Road,
Nadiad, District : Kheda.
- 2 Auto Finance Ltd.,
At Bharatbhuvan, Station Road,
Nadiad, District : Kheda.
- 3 I.C.I.C.I Lombard General Insurance Co. Ltd.,
At 3rd Floor, 304, Baverli Arcade,
College Road, Nadiad.

Party of Motorcycle being No.GJ.07.CQ.8161

- 4 Sirajkhan Sarfukhan Pathan
Adult, Occupation : Driver,
Residence : Near Masjid, Andhaj,

- Ta. Nadiad, District : Kheda.
5 Firojkhan Mohammadkhan Pathan
Adult, Occupation : Business,
Residence : Andhaj, Ta. Nadiad, District :Kheda.
6 Bajaj Allianz General Insurance Co. Ltd.,
At F/4, Western City, Pij Road, Nadiad.

APPEARANCE:	
For the petitioner	Ld. Advocate Shri K.B. Patel
For the opponent No.3	Ld. Advocate Shri A.H. Patel
For the opponent No.6	Ld. Advocate Shri A.D. Patel

Petition u/S. 166 of the M.V.Act.
Claim Valued at Rs.4,00,000/-

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

- 1 Present claim petition is preferred under Section-166 of the Motor Vehicle Act, for getting compensation of Rs.4,00,000/-.
- 2 The factual matrix leading to the present proceeding are as under :
- 2.1 That on 07.03.2020, claimant was pillion rider on the Motorcycle bearing registration No.GJ.07.CQ.8161 and said Motorcycle was being driven by opponent No.4 and when they reached near the place of incident, at that point of time, opponent No.1 came driven by Piaggio Rickshaw bearing registration No.GJ.07.YY.3108 in full speed, in rash and negligent manner, endangering to the human life and driver of Rickshaw suddenly took turn toward Mulej and dashed his Rickshaw with the

above referred Motorcycle as a result accident occurred and in the said accident, claimant sustained serious injuries including fracture.

3 The summons of the claim petition were served upon the opponent. Opponent Nos.1, 2, 4 & 5 chose not appeared before this Tribunal. Opponent Nos.3 & 6 - Insurance Companies appeared through its Ld. Advocates and filed written statements at Ex.23 & 28 respectively, wherein, the claim of the claimant is denied in *toto*. The facts with regard to age, income and fact of the accident are denied.

4 From the above referred pleadings, Tribunal had framed the following issues :

- i. Whether the claimant proves that she had sustained injuries because of rash and negligent driving on the part of the driver, of the vehicle involved in the accident ?
- ii. Whether the claimant is entitled to get compensation ? If so ? Then what amount and from whom ?
- iii. What order and award ?

5 My findings to the above issues are as under : -

1. As per decision.
2. Partly in affirmative.
3. As per final order.

Issue No. 1 :

6 To prove negligence, claimant has produced following documentary evidence :-

Sr. No.	Description of Documents	Exhibit/Mark
1	Copy of chief examination	26
2	Copy of complaint	31
3	Copy of panchnama	32
4	Copy of discharge cards	41 & 42
5	Copy of D.L. opponent No.1	34
6	Copy of R.C. Book of Rickshaw	35
7	Copy of insurance policy of Rickshaw	36
8	Copy of D.L opponent No.4	37
9	Copy of insurance policy of Motorcycle	38
10	Medical bills	39
11	Disability certificate	40
12	Copy of charge sheet	45

6.1 So far the short facts of the present case are already been narrated above. Now it is pertinent to note here that, while deciding the point of negligence, it has to be born in mind that the negligence is required to be proved in claim petition u/s 166 of the Act only on the touchstone of the preponderance of probability and not beyond doubt. Above referred ratio is laid down by Hon'ble Apex Court in the cases of i) *Bimla Devi v/s H.R.T.C.*, reported in *AIR 2009 SC 2819* and ii) *Parmeshwari Devi v/s Amir Chand*, reported in *2011 (11) SCC 635*.

6.2 This Tribunal has heard the Ld. Advocates for the parties and perused oral, as well as, documentary evidence produced on record. The Ld. Advocate for the opponent No.3 has submitted written arguments at Ex.57 and cited some authorities. On the other

hand, Ld. Advocate for the opponent No.6 has also submitted written arguments at Ex.69. This Tribunal has gone through the written arguments submitted by the parties and taken into consideration for the involvement of vehicle, negligence, etc.

- 6.3 Here in the present case, Ld. Advocate for the opponent No.3- Insurance Company of Piaggio Rickshaw has strongly raised the question of involvement of the Piaggio Rickshaw bearing registration No.GJ.07.YY.3108 and stated that applicants have falsely joined the said vehicle to get the benefit of compensation. Ld. Advocate for the opponent No.3 has further submitted that as per the Telephone vardhy at Ex.53, Rickshaw being No.GJ.07.YY.817 was involved in the accident, therefore, vehicle Piaggio Rickshaw bearing registration No.GJ.07.YY.3108 was falsely joint as a party. Herein the present case Investigating Officer is cross examined by the Ld. Advocate for the claimant vide Ex.52 and in his cross-examination, he has specifically stated on oath that “એ વાત ખરી છે કે, ટેલિફોન વર્ધીમાં વાહનનો નંબર દવાખાનામાંથી લખાયેલ છે. એ વાત ખરી છે કે, સામાન્ય રીતે ઘણીવાર ટેલિફોન વર્ધી મળતી હોય તેમાં વાહનોના નંબરની ભુલો થતી હોય છે. તે વાત ખરી છે કે, મારી તપાસમાં વાહન નં. જી.જે.-૦૭-વાય.વાય.-૦૮૧૭ સંડોવાયેલ હોય તેવું

ખુલેલ નહીં. તે વાત ખરી છે કે, મારી આખી તપાસમાં રીક્ષા નં.જી.જે.૦૭-વાય.વાય.-૩૧૦૮ હતો તેવું ખુલેલ. એ વાત ખરી છે કે, તેના આધારે પુરતો પુરાવો હોવાથી મેં ચાર્જશીટ કરેલ." Thus as per the deposition of the Investigating Officer after *fullfledge* investigation, police has filed charge-sheet against the driver of Piaggio Rickshaw bearing registration No.GJ.07.YY.3108, which is on record at Ex.45. Further charge-sheet is filed by the police department after investigation is only against the driver of Piaggio Rickshaw bearing registration No.GJ.07.YY.3108. Though the the charge-sheet is not admissible in the evidence but it is more reliable than the orally submission by the opponent that vehicle Piaggio Rickshaw bearing registration No.GJ.07.YY.3108 was falsely joined as a party. Even the Insurance Company has also not taken recourse of any legal procedure for charge-sheet against the driver of Piaggio Rickshaw bearing registration No.GJ.07.YY.3108 and involving the vehicle Piaggio Rickshaw bearing registration No.GJ.07.YY.3108. So merely bare words of the insurance company that, vehicle Piaggio Rickshaw bearing registration No.GJ.07.YY.3108 was falsely joint as a party in the claim petition, is not proved by any cogent evidence. At this stage reference is also required to be made to the ratio laid down by Hon'ble Apex Court in the case of *National*

Insurance Company Ltd., Vs. Chamundeswari, in Civil Appeal No. 6151/2021, wherein in para No.8 it has been held as under:-

“It is clear from the evidence on record of PW1 as well as PW3 that the Eicher van which was going in front of the car, has taken a sudden right turn without giving any signal or indicator. The evidence of PW1 & PW3 is categorical and in absence of any rebuttal evidence by examining the driver of Eicher van, the High Court has rightly held that the accident occurred only due to the negligence of the driver of Eicher van. It is to be noted that PW1 herself travelled in the very car and PW3, who has given statement before the police, was examined as eyewitness. In view of such evidence on record, there is no reason to give weightage to the contents of the First Information Report. If any evidence before the Tribunal runs contrary to the contents in the First Information Report, the evidence which is recorded before the Tribunal has to be given weightage over the contents of the First Information Report.”

Thus considering the surrounding facts and circumstances of the present case, above referred oral, as well as, documentary evidence, observation made by the Higher Forum in the case of *National Insurance Company Ltd., Vs. Chamundeswari*, this Tribunal is of opinion that Piaggio Rickshaw bearing registration No.GJ.07.YY.3108 was

involved in the accident.

- 6.4 Ld. Advocate for the opponent No.6 has submitted that charge sheet is filed against the driver of Rickshaw and driver Rickshaw was solely negligent for the accident. On the other hand, Ld. Advocate for the opponent No.3 has submitted that rider of Motorcycle was also negligent for the accident.
- 6.5 Negligence means failure to exercise the required degree of care and caution expected of a prudent driver. Negligence is the omission to do something which a reasonable man, guided upon the considerations, which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do. Negligence is not always a question of direct evidence. It is an inference to be drawn from proved facts. Negligence is not an absolute term, but is a relative one, it is rather a comparative term. What may be negligence in one case may not be so in another. Where there is no duty to exercise care, negligence in the popular sense has no legal consequence. Where there is a duty to exercise care, reasonable care must be taken to avoid acts or omissions which would be reasonably foreseen to be likely to casual physical injury to person. The degree of care required, of course, depends upon the facts in each case. On these broad principles the negligence of drivers required to be assessed.

6.6 Now to appreciate the rival contention raised by the Ld. Advocates, it is necessary to have look through oral and documentary evidence on record. In support of the claim petition, claimant has produced copy of complaint at Ex.31 and copy of Panchnama is on record at Ex.32. Copy of charge-sheet is on record at Ex.45, which is filed against the driver of Piaggio Rickshaw, but under the law of Tort, it is not always that the person against whom the charge sheet is laid, is the only person, who is to be held negligent. Claimant entered into the witness box and her deposition is recorded at Ex.26 and reiterated the averments made in the claim petition. The Ld. Advance for the opponent No.3 has cross-examined the claimant, in her cross-examination, she has stated on oath that “એ વાત ખરી છે કે, રીક્ષા અને મોટરસાઈકલ સામસામે અથડાયેલા. હું જતી હતી તે રસ્તો કેટલો પહોળો હતો તેનો મને ખ્યાલ નથી. હું મોટરસાઈકલ પર ઘોડો કરીને બેઠેલી હતી. ” I have gone through the oral, as well as, documentary evidence viz. affidavit and police papers i.e. complaint, Panchnama etc. It is an admitted position of fact that the both the drivers of vehicles, who are the best person to depose on oath, have also not stepped in to the witness-box, therefore, adverse inference will have to be drawn. If both the drivers of the vehicles had taken due care and had not driven their vehicles in rash and negligent manner and in excessive speed,

they would not have lost control over the steering and the accident could have been avoided. It appears that the care expected to a quick running vehicle commensurate with the situation and conditions of the road, which was not maintained by the drivers. It is a cardinal principles of law that a person driving a motor vehicle on a road must drive the vehicle with reasonable care, strictly observing the traffic regulations and the rules of the road. The driver always be conscious of the motto “*expect the unexpected*” and should be apprehensive of a vehicle from the opposite direction. It is cardinal principle of law that one has to drive his vehicle in such a fashion that it may not cause any damage/injury to any property/person but both the drivers have failed in their duty. It is also appears from the police papers that, driver of Piaggio Rickshaw bearing registration No.GJ.07.YY.3108 was more negligent for the accident. Thus considering the oral as well as documentary evidence, I am of the opinion that, driver of Piaggio Rickshaw bearing registration No.GJ.07.YY.3108 was negligent to the extent of 60%, whereas, rider of Motorcycle bearing registration No.GJ.07.CQ.8161 is held negligent to the extent of 40% in causing the above referred accident. In view of the above referred discussions, I decide issue No.1, in affirmative.

Issue No.2 :-

7 It is the case of the claimant that, at the time of accident, claimant was doing labour work and was earning Rs.9,000/- per month. But claimant has not produced any cogent document to prove and point out that she was earning Rs.9,000/- per month. It is cardinal principle of law that Tribunal cannot expect from the poor labourer or small time vendor to maintain his/her books of account with respect to his/her monthly income and expenditure. Thus considering the month & year of the accident i.e. March 2020, the claimant is considered as unskilled category, her minimum wages income is assessed of Basic Rs.276/- and monthly Rs.8,278/-. Further claimant has deposed on oath at Ex.26 that her date of birth is 24.05.1987 and accident occurred on 07.03.2020, thus claimant was aged about 32 years, 09 months and 12 days at the time of accident, thus considering her age about 33 years at the time of accident, she is entitled to get multiplier of '16' as held by the Hon'ble Apex Court in ***“Sarla Verma & Ors. V/s. Delhi Transport Corporation & Anr.”*** reported in “2009 A.C.J. 1298”.

7.1 Claimant has produced a disability certificate at Ex.40. In the disability certificate Doctor has opined that claimant has sustained permanent partial impairment of 26% in relation to right lower limb. However, Ld. Advocates for the respective parties have agreed to assess permanent partial impairment of the claimant as 10% of whole body. Said consent

purshis is on record at Ex.29. In view of the above referred discussions, claimant is entitled following amount as future loss of income : (Rs.8,278/- p.m. x 12 months x 10% disability x multiplier of 16) = Rs.1,58,937/-.

7.2 Claimant has produced a medical bills below list at Ex.39 to the tune of Rs.1,02,773/-. The applicant has stated that she had spent huge amount for her medical treatment, hence considering the injuries sustained by the claimant and medical bills, I deem it fit to award amount under the head of medical expenditure. Therefore, claimant is entitled for Rs.1,02,773/- under the head of medical expenditure. And considering the nature of injuries sustained by the claimant, **mental & physical shock and agony suffered by the claimant, and incurred expenditure for treatment, medicine special diet, attendant, transportation etc.**, it would be proper to award to following amounts of compensation under different heads.

Rs.	1,58,937/-	Future economic loss
Rs.	10,000/-	Pain, shock and sufferings.
Rs.	5,000/-	Special diet, attendant & transportation.
Rs.	1,02,773/-	Medical
Rs.	16,556/-	Actual loss for two months
Rs.	2,93,266/-	Total Compensation

8 **Liability** :~ So far the liability is concerned, the Ld. Advocate for the opponent No.3 - Insurance Company of

Piaggio Rickshaw bearing registration No.GJ.07.YY.3108 has mainly contended the matter that the offending vehicle had no any permit at the time of accident, therefore, Insurance Company is not liable to pay any compensation and requested to exonerate the Insurance Company. In support of his arguments he has relied upon the Judgment of Hon'ble High Court of Gujarat in the case of ***HDFC Ergo General Insurance Co. Ltd., Vs. Bhaveshbhai Shantilal Mehta.*** (2) Hon'ble Allahbad High Court in the case of ***New India Assurance Co. Ltd., Vs. Chhedana and Ors,*** (3) Hon'ble Supreme Court of India in the case of ***Sithara N.S. Vs. Sai Ram General Insurance Co. Ltd.,***

8.1 Herein the present case, concerned person from R.T.O is examined by the Ld. Advocate for the opponent No.3 and said witness is also cross examined by the Ld. Advocate for the claimant and as per the disposition of the said witness, it appears that the offending vehicle had no any permit at the time of accident. But it is pertinent to note here that claimant is third party and she is not *tortfeasor* of any vehicles and policy of Piaggio Rickshaw bearing registration No.GJ.07.YY.3108 was in force at the time of accident. Thus at this state reference is required to be made on the decision of Hon'ble Supreme Court in the case of "***K. Nagendra Vs. The New India Insurance Co. Ltd., & Ors. (Reported in 2025 INSC 1270), decided on 29.10.2025,*** wherein, para Nos.8, 9 & 10 are

relevant and, therefore, same are reproduced herein under:-

- “8 *Now, let us consider the instant case. The record reveals that the offending vehicle did not have the permit to enter Channapatna City, where the accident took place. This position is not in dispute. Unquestionably, therefore, the terms of the permit have been deviated.*
- 9 *The purpose of an insurance policy in the present context is to shield the owner/operator from direct liability when such an unforeseen/unfortunate incident takes place. To deny the victim/dependents of the victim compensation simply because the accident took place outside the bounds of the permit and, therefore, is outside the purview of the insurance policy, would be offensive to the sense of justice, for the accident itself is for no fault of his. Then, the Insurance Company most certainly ought to pay.*
- 10 *At the same time though, when an Insurance Company takes on a policy and accepts payments of premium in pursuance thereto, it agrees to do so within certain bounds. The contract lays down the four corners within which such an insurance policy would operate. If that is the case, to expect the insurer to pay compensation to a third party, which is clearly outside the bounds of the said agreement would be unfair. Balancing the need for payment of*

compensation to the victim vis-à-vis the interests of the insurer, the order of the High Court applying the pay and recover principle, in our considered view, is entirely justified and requires no interference”.

- 9 Thus, from the above mentioned discussions and ratio laid down by the Hon'ble Higher Forum and particular facts of the present case, this Tribunal is of the opinion that opponent No.3- Insurance Company of Piaggio Rickshaw bearing registration No.GJ.07.YY.3108 is directed to first pay amount of compensation in favour of the claimant and thereafter, insurance company can recover the amount of compensation from the owner and/or driver of the offending vehicle Piaggio Rickshaw bearing registration No.GJ.07.YY.3108.
- 10 As discussed above, two vehicles were involved in the above referred accident and this Tribunal has held that the driver of Piaggio Rickshaw bearing registration No.GJ.07.YY.3108 was negligent to the extent of 60%, whereas, rider of Motorcycle bearing registration No.GJ.07.CQ.8161 is held negligent to the extent of 40% in causing the above referred accident. It is also pertinent to note here that present claimant is third party, she was not driver of the any vehicles and she was not *tortfeasors*, therefore, present claimant can recovered whole amount from any of the *tortfeasors*. Said ratio laid down by Hon'ble Supreme Court's recent Judgment viz. **CIVIL APPEAL NO.4244 OF 2015 [Arising out of SLP (C) No.14015/2010] – Khenyei v. New India Insurance Ltd.** In

the said judgment, it is held that when there are two vehicles involved in an accident injuring a third party, it is a case of composite negligence. It has been held further that the extent of negligence of joint *tort-feasors* in such a case is immaterial for satisfaction of the claim of the plaintiff/claimant and need not be determined by the court and that however, in case, all the joint *tortfeasors* are before the court, it may determine the extent of their liability for the purpose of adjusting interse equities between them at appropriate stage. Hence as per the above referred discussions, all the present opponents are jointly and severally liable to pay awarded amount to the present claimant. Hence, I decide issues No.2 partly in affirmative.

- 11 **INTEREST**:~ The awarded amount shall carry interest at the rate of 7.5% per annum from the date of the application till realization, and hence Issue No.3. Following is the order in the interest of justice :-

~: O R D E R :~

- 1 The claim petition is partly allowed.
- 2 Claimant is entitled for Rs.2,93,266/- (Rupees Two Lac, Ninety Three Thousand, Two Hundred and Sixty Six Only), from the present opponents, who are jointly severally liable to pay awarded amount along with the proportionate cost with interest at the rate of 7.5% per annum from the date of filing of the petition till its realization.

- 3 Insurance company of Piaggio Rickshaw bearing registration No.GJ.07.YY.3108 is directed to first pay amount of its share in favour of the claimant and thereafter, insurance company can recover the amount of compensation from the owner and/or driver of the offending vehicle Piaggio Rickshaw bearing registration No.GJ.07.YY.3108.
- 4 The opponents are hereby directed to deposit awarded amount within 30 days of the order.
- 5 It is hereby further ordered to the opponents that, as per the guidelines of Hon'ble Supreme Court, the amount of award be deposited in the District Bank Account No.02900200000658, IFSC: BARB0NADIAD (the fifth letter is Zero), Bank of Baroda, Main Branch, Nadiad, through R.T.G.S. or NEFT, and the same shall be informed to the M.A.C.T. Branch, District Court, Kheda at Nadiad, through E.Mail at mact-courtke@gujarat.gov.in as per the purshis.
- 6 Deficit court fees stamp, if any, be recovered from the awarded amount and interim amount if paid be adjusted.
- 7 Thereafter, out of the awarded amount, 60% amount be invested as fixed deposit in any nationalized bank for initial period of five years. The remaining 40% amount be paid to the applicant by account payee cheque/s forthwith.
- 8 The petitioner will not be entitled to get any loan, advance

or withdrawal or can create any in encumbrances on the aforesaid fixed deposit receipt without prior permission of this Tribunal. However periodical interest accrued from time to time on the fixed deposits be paid to claimant.

9 Award be drawn accordingly in the above petition.

Signed and pronounced in the open Court today.

Date : 06-03-2026.

Nadiad.

(Prakashkumar P. Purohit)
3rd Additional District Judge,
M.A.C.T.(AUX)
Kheda at Nadiad
GJ00685.