

GJMH010000122024



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BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL

(MAIN) MAHESANA, AT MAHESANA

JUDGMENT PASSED IN

MOTOR ACCIDENT CLAIM PETITION NO.02 of 2024.

Exh. 37**Claimant:**

Rabari Darjabhai Nethiram, Age: 43, Occupation : Labor,
Address: Bhatana, Ta.Revdar, Dist.Shihori, Rajasthan
Present Address At. Near Geratpur Patiya,
Khetarma, Ta. Dist. Mehsana.

V/S

Opponents :-

- (1) Driver of Truck No.GJ-02-XX-5545
Parsottam P Saliya,
Age : Adult, Occupation: Driving,
Resi. At.Dhanora, Ta.Sami, Dist.Mehsana.
- (2) Owner of Truck No.GJ-02-XX-5545
Rameshbhai Fuljibhai Chaudhary,
Age : Adult, Occupation: Business,
Resi. Koratvas, Kukas, Ta.Dist.Mehsana.

(3) Insurer of Truck No.GJ-02-XX-5545

Reliance General Insurance Company Ltd.

Address : 2nd Floor, Radhe House,

Opp. Classic Empire, Mehsana.

Subject :- Claim Petition For Rs.25,00,000/- u/s.166 Of
The M. V. Act.

APPEARANCE

Mr.L.H.Rana : Learned advocate for the claimant.

Mr.N.V.Parmar : Learned advocate for the opponent No.1 & 2.

Mr.S.I.Shah: Learned advocate for the opponent No.3.

-:: JUDGMENT ::-

[1] Present claim petition has been filed by the claimant u/s 166 of Motor Vehicle Act to recover the amount of Rs.25,00,000/- for compensation along with 18% rate of interest on account of an accident occurred on date 23.12.2022.

[2] The case of claimant can be summarized as under :-

On December 23, 2022, the claimant and his brother, Narshabhai Rabari, were crossing the road near Geratpur Patia while tending to their livestock. At that time, a truck bearing registration number GJ-2-XX-5545, traveling from Mehsana, was being driven at an excessive speed. Due to the rash and negligent driving of the respondent driver, the truck's tire ran over the claimant's right leg, causing him to fall and sustain grievous injuries. The claimant was immediately rushed to Mehsana Civil Hospital via a 108 ambulance for primary treatment. Owing to the severity of the injuries, he was subsequently referred to Ahmedabad Civil Hospital and later admitted to Mahadev Hospital in Palanpur under the care of Dr.

Ramesh Patel. The medical evidence indicates that the claimant suffered extensive trauma to the mouth and internal injuries. Notably, the injuries to the right leg were so severe that a surgical amputation was required above the knee. The accident is a direct result of the sole negligence and lack of due care by the driver of the offending vehicle. A formal complaint regarding the incident has been registered at the Langhnaj Police Station vide C.R. No. 1120603822090/23.

[3] The opponents were duly served with the notices. The opponent No.1 and 2 appeared through learned advocate Mr.N.V.Parmar. The opponent No.1 and 2 has filed written statement vide Exh.08 wherein he has denied most of the factum of the accident and lastly prayed to dismiss the claim of the applicant. The opponent No.3 Reliance General Insurance Company Ltd. has appeared in the tribunal through its learned advocate Mr.S.I.Shah and filed written statement vide Exh.14 wherein the insurance company has denied most of the fact of the claim petition. The opponent also stated that there is whole negligence by the applicant himself and due to that the present accident occurred. He also stated that the applicant has not proved his monthly income on the basis of cogent evidence. And with that he lastly prayed to dismiss said applicant with costs.

[4] In the light of rival pleadings and contentions, the following issues have been framed at Exh.15.

:-: ISSUES :-:

- (1) Whether claimant proves that the injured sustained injuries on account of rashness or negligence on the part of driver of the vehicle involved in the accident ?

- (2) What amount, if the claimant is entitled to, by way of compensation and from which of the opponent ?
- (3) What order and award ?

[5] My findings on the above issues are as under:-

- (1) In the affirmative.
- (2) As per final order.
- (3) As per final order.

∴ REASONS ∴

[6] The claimant – Rabari Darjabhai Nethiram has filed an affidavit in the form of deposition, for his claim vide Exh.19. The opponent No. 1 and 2 was absent at the time of recording of evidence therefore their right to cross-examine the witness is closed. In the affidavit, the claimant has reiterated the facts of the claim petition. The opponent No.3 has cross-examined the witness.

The learned advocate of the opponent has argued that applicant has not produced any cogent evidence to prove his income therefore he has argued that consider the income of the applicant as per the say of applicant in claim petition as well as in the affidavit. I have perused the arguments advanced by the learned advocates of both sides. Before I proceed to appreciate the evidence, the following documents are required to be referred to since they have been taken into consideration for determination of just and adequate compensation.

[7] **Documentary evidences.**

Sr.	Particulars	Exh
1	Certified copy of FIR	20
2	Copy of Panchnama of place of offense	21
3	Copy of driving license of driver of Truck No.GJ-02-XX-5545	23

4	Copy of R.C.Book of Truck No.GJ-02-XX-5545	24
5	Copy of insurance policy of Truck No.GJ-02-XX-5545	25
6	Copy of permit of Truck No.GJ-02-XX-5545	26
7	Copy of fitness certificate - Truck No.GJ-02-XX-5545	27
8	Copy of medicals bills (Rs.4,90,089)	33
9	Disability certificate	31
10	Discharge card of applicant	22
11	Copy of charge-sheet	34

[8] **ISSUE NO.1 :- Negligence :**

Regarding the issue of negligence, the Tribunal has carefully evaluated the oral testimony of the claimant in conjunction with the documentary evidence placed on record. The FIR at Exh. 20 and the Panchnama of the scene of offense at Exh. 21 clearly establish the topography of the accident site and the trajectory of the offending vehicle. The Panchnama reveals that the Truck bearing No. GJ-02-XX-5545 was being driven at such an excessive speed that the driver failed to exercise the standard of care expected of a prudent driver, particularly while navigating a road populated by pedestrians and livestock. The nature of the impact, as evidenced by the severe crush injuries and subsequent **amputation** documented in the **Disability Certificate (Exh. 31)** and **Medical Bills (Exh. 33)**, further corroborates the theory of high-speed impact. The respondent driver has failed to lead any cogent evidence to rebut the site of the impact or to suggest any contributory negligence on the part of the claimant. Under the doctrine of *res ipsa loquitur*, the circumstances of the accident—where a heavy vehicle runs over a pedestrian's leg on an open road—speak for themselves. Consequently, this Tribunal holds that accident was the direct and proximate result of the sole, rash, and negligent driving of driver of

Truck No. GJ-02-XX-5545, thereby fixing entire tortious liability upon opponent No.1. Hence, I answer issue No.1 in affirmative.

[9] **ISSUE NO.2 :- Quantum of Compensation:**

For determining the quantum of compensation, it is pertinent to assess the age and income of the claimant at the time of accident. It is submission of the learned advocate for the claimant that the claimant was aged 43 years at the time of accident. The claimant has submitted copy of Adhar and PAN card at the time of instituting this claim petition. Looking to the said Adhar and PAN card it seems that date of birth of the applicant is 01.06.1979 and accident took place on 23.12.2022. Hence as per this document the age of the applicant was 44 years old. In the absence of any contrary evidence, this tribunal is considered the age of the claimant as **44 years** at the time of accident.

[10] As per the claim petition, the claimant asserted that he was earning ₹5,000/- from maintaining livestock activity. However the applicant has not produced any cogent evidence to prove his income. In the absence of any other credible or contemporaneous documentary evidence to substantiate the monthly earnings of the Applicant at the time of the accident, this Tribunal finds it appropriate to adopt the minimum wage schedule as a reasonable yardstick. The accident occurred in the year 2022, at which time the prevailing daily wage for an unskilled/semi-skilled laborer was ₹340/-. By calculating the same for a standard period of 26 working days per month, the monthly income of the Applicant is assessed at ₹ 8,840/- (i.e., ₹340 x 26 days). Accordingly, for the purpose of calculating the compensation under the head of loss of income, the monthly income of the Applicant is fixed at **₹8,840/-**.

- [11] I have perused the disability certificate produced herein vide Exh.31 and it reveals that the petitioner is suffering from difficulties at the time of work. Claimant's disability has been assessed as 80% for his Right lower limb by Government of Rajasthan. In the absence of any endorsement made by the advocates of the party this tribunal considers the physical disability of the applicants as 80% body as a whole to the petitioner.
- [12] As this tribunal has already assessed and determined the age of applicant, as 44 years Hence multiplier of 14 years for the age group of 41 to 45 years is adopted and, therefore, in view of **SARLA VERMA v. DELHI TRANSPORT CORPORATION, reported in AIR 2009 SUPREME COURT 3104**, multiplier applicable would be 14 and in view of the same, adopting the multiplier of 14, the **future loss of income** to the petitioner is assessed as **₹11,88,096/-** (₹8,840/ x 80% = ₹7,072/-, ₹7,072/- x 12 x 14= ₹11,88,096/-) and hence I award the same.
- [13] Further on perusal of the documents available on record, especially list of medical bills vide Exh.33, it appears that the claimant took treatment at the Mahadev Orthopaedic hospital. Thus, considering the injuries and recovery period, it requires no mentioning that the petitioner would have undergone immense pain and trauma during the period of treatment and recovery and in view of the same, this Tribunal is inclined to grant **₹50,000/-** to the petitioner towards **pain, shock and suffering**.
- [14] Further considering the factual aspects of the matter and considering the fact that the petitioner is facing mental shock and suffering and during the said period, he would have definitely incurred huge amount towards medicines and treatment and he has produced bills

of medical treatment vide Exh.33 of ₹4,90,089/- and in view of the same, this Tribunal is inclined to grant **₹4,90,089/-** towards **medical expenses**.

[15] Further it is a matter of record that during his treatment period and looking to his age about 44 years the petitioner is unable to do anything of his own and he requires constant attendance and assistance of someone for performing his routine functions. Moreover he must have visited the doctors for regular follow up by hiring private vehicle and he must have taken a nutritious food for speedy recovery. Thus, petitioner is entitled to **₹25,000/-** towards **attendance, special and nutritious diet and transportation expenses**.

[16] On perusal of the documents available on record, especially discharge card of Exh.22 and disability certificate at Exh.31 on record, claimant has received disability as certified by medical expert and issued by government of Rajasthan, hence, it is quite evident that he would have been unable to work at least for 6 months and, in view of the same, this Tribunal is inclined to award **₹53,040/-** towards **actual loss of income**.

[17] Under the circumstances, petitioner is entitled to get compensation as per the following particulars :-

Amount	Details
₹11,88,096/-	Future Loss of Income
₹53,040/-	Actual Loss of income
₹4,90,089/-	Medical expenses.
₹25,000/-	For attendance, transportation and Nutritious food
₹50,000/-	Pain, shock and suffering.
₹2,00,000/-	For implanting aesthetic leg
₹20,06,225/-	Total Compensation

[18] In the present petition, the petitioners have prayed for 18% interest along with costs of the petition but in view of the latest judgments of the Hon'ble Apex Court, **Savitha Vs. Cholamandalam MS General Ins.Co.Ltd. And others reported in 2020 ACJ 2157**, in which Hon'ble Court Apex has held that, the petitioner would be entitled to get interest at the rate of 6% per annum, but looking to the peculiar circumstances petitioner would be entitled to get interest at the rate of 7% on the amount of compensation, from the date of petition till its realization and as the claim petition has been partly allowed, petitioner is entitled to get proportionate costs only.

[19] So far as the point of liability is concerned, in the claim petition, it is an undisputed fact that opponent No.1 is the driver of Truck No.GJ-02-XX-5545, opponent No.2 is the Owner of Truck No.GJ-02-XX-5545 and opponent No.3 is the insurer of involved Truck No.GJ-02-XX-5545. The policy of the offending vehicle is produced on record at Exh.25. The period of policy is from 16.03.2022 to 15.03.2023 and the accident occurred on 23.12.2022 which means the policy was in force at the time of accident.

In view of the finding recorded hereinabove that the accident occurred solely due to the rash and negligent driving of Opponent No.1, the driver of the offending Truck No.GJ-02-XX-5545, the liability for payment of compensation necessarily fastens, in the first instance, upon Opponent No.1 as the principal tort-feasor. Opponent No.2, being the registered owner of the said vehicle, is vicariously liable for the wrongful act of his driver under the settled principle of law. As regards Opponent No.3, the Insurance Company, the insurance policy covering the offending Truck, produced at Exh.25. Looking to the policy, it indicates that period of insurance is from

16.03.2022 to 15.03.2023 and accident occurred on 23.12.2022 which shows that the policy was in force on the date of the accident. Thus, Opponent No.3 is statutorily bound to indemnify the insured (Opponent No.2) in terms of Section 147 read with Section 149 of the Motor Vehicles Act, 1988.

In the present case, Opponent No.3 has not been able to establish any breach of policy conditions or any statutory defence available under Section 149(2) of the Act. Consequently, Opponent Nos. 1, 2 and 3 are jointly and severally liable for the payment of compensation; however, Opponent No.3, the insurer, being the indemnifier, is directed to satisfy the award. In view of the same, the following order is passed.

:: O R D E R ::

1. The Claim Petition is partly allowed to the extent of **₹20,06,225/- (Rupees Twenty Lakh Six Thousand Two Hundred Twenty Five Only)** together with proportionate costs and interest at the rate of 7% per annum from the date of the petition, till its realization.
2. The opponent No.1 the driver, opponent No.2 the owner and opponent No.3, the insurer has to pay the aforesaid awarded amounts jointly or/and severally, to petitioner, along with interest and proportionate costs within 30 days from the receipt of the judgment and award.
3. The opponents of the claim petition are hereby directed to deposit the said amount by RTGS/NEFT in the account maintained by the District and Session Court, Mahesana.
4. On depositing the aforesaid amount in this Tribunal, the amount of interim compensation, if any paid to the claimants, be deducted.

5. The Office is directed to deduct requisite court-fees before the claimant is permitted to withdraw the amount of compensation, unless claimant produces certificate in terms of court-fee relaxation.
6. Out of total compensation amount, 30% amount shall be paid by way of account payee cheque to claimant and remaining 70% amount shall be invested in the fixed deposit in the name of the claimant for a period of five years with any Nationalized Bank of choice of the claimant.
7. Claimant shall be entitled to withdraw periodical interest on the above said FDRs, which shall accrue from time to time, however the claimant shall not be entitled to encase the FDR without prior permission of this Tribunal.
8. Necessary intimation be given by letter to concerned Bank with direction to the Bank not to flow any loan or credits over the above said FDR.
9. Opponents to bear their own costs.
10. Award be drawn accordingly.

Pronounced in the open court today, on 13th March of 2026.

Date : 13-03-2026

Place : Mahesana.

[Ambrish Laljibhai Vyas]
Principal District Judge &
Motor Accident Claim Tribunal
(Main),Mahesana.
Code No.GJ00508.