GJMH010000122019

Presented on	:	01.01.2019
Registered on	:	01.01.2019
Decided on	:	07.04.2026
Y- M – D	:	07-03-06
Exh.	:	61

BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL, (MAIN) AT MAHESANA.

JUDGEMENT PASSED

IN

MOTOR ACCIDENT CLAIM PETITION NO.3 OF 2019

APPLICANT:-
Thakor Chetanji Udaji
Aged about 25 years,
Occupation: Masonwork,
R/o. Buttapaldi, Opp. Bahucharmata Temple,
Udva Vas, Tal. & Dist. Mahesana.

V E R S U S

OPPONENTS:-

(1) **Driver & Owner of Motorcycle No.GJ-24-AG-4322**
Jenaji Punaji Thakor
Adult, Occupation: Driving,
Original resident of: Sanpra, Hanumanpura,

Tal. & Dist. Patan.
At present at: Buttapaldi, Opp. Bahucharmata Temple, Udva Vas, Tal. & Dist. Mahesana.

(2) **Insurance Co. of Motorcycle No.GJ-24-AG-4322**
ICICI Lombard General Insurance Co. Ltd.,
Highway Road, Mahesana.

Subject: Claim petition under Section 166 of M.V. Act to get compensation of Rs.2,50,000/- from the opponents under various heads.

Appearance:-
Mr. P.P. Raval, Ld. Advocate for applicant.
Mr. K.U. Amir, Ld. Advocate for opponent No.1.
Mr. S.I. Shah, Ld. Advocate for opponent No.2.

J U D G E M E N T

(1) The applicant has preferred present claim petition under Section 166 of M.V. Act to get compensation of Rs.2,50,000/- from the opponents under various heads in respect of injuries sustained by him in a vehicular accident.

(2) That, brief facts of present case are that; on 22/09/2018 at about 11 O'clock in the morning, when the applicant was travelling on a motorcycle No.GJ-24-AG-4322 as a pillion rider towards Ambaji, which was driven by Jenaji Punaji Thakor – opponent No.1, at that time near Danta- Ambaji Road near village Panchha, the driver of motorcycle lost the control over the motorcycle, as a result thereof, the applicant fell down and sustained grievous injuries over his body. The applicant was aged 25 years and earned

Rs.7,000/- per month at the relevant time of accident. As such, accident was occurred upon sole negligence in driving on the part of driver of Motorcycle – opponent No.1 involved in the accident and hence, present claim petition preferred by the applicant to get compensation from the opponents under various heads.

(3) Notice duly served upon the opponents. The opponent No.1 appeared and filed his Written Statement vide Exh.9 and admitted the contents of the claim petition. The opponent has submitted that the claim petition is required to be allowed.

(4) The opponent No.2- Insurance Co. has filed its Written Statement vide Exh.15 and submitted that present claim petition is not legally maintainable and tenable and the same is required to be dismissed. It has been further submitted that the driver of the vehicle motorcycle was not holding valid and effective driving license at the time of accident and was not qualified for holding or obtaining such driving license and has not satisfied the requirements of the Rule No.3 of the Central Motor Vehicles Rules, 1989. The opponent has also denied the date, time and place of accident. The opponent has also denied the involvement of the vehicle. The opponent has also denied the age and income of the applicant and applicant has been asked to prove the same with cogent documentary evidence. Thus, it is prayed to dismiss the claim petition with cost.

(5) In support of the present claim petition, the applicant has produced the following oral as well as documentary evidence, which are as under:

Oral evidence:-

Examination-in-chief on Affidavit of applicant produced at Exh.22.

Affidavit in Chief of witness of applicant produced at Exh.41.

DOCUMENTARY EVIDENCE :-

1) Copy of Discharge Card of Sai Krishna Hospital. Exh.45.
2) Medical Reports. Exh.46 & 47.
3) Disability Certificate. Exh.42.
4) Medical Bills. Exh.48 & 49.
5) Copy of Driving License of opponent No.1. Exh.50.
6) Copy of RC Book of Motorcycle. Exh.51.
7) Copy of Insurance Policy of Motorcycle. Exh.52.

(6) The opponent No.2- Insurance Co. has examined its witness – Dr. Alka Umesh Jhaveri vide Exh.55 and produced medical documents produced therewith vide Exh.56. The opponent No.2 has also examined its witness Dr. Piyush Amaratlal Modi vide Exh.58 and produced case paper of Adhyashakti General Hospital, Ambaji vide Exh.59.

(7) Learned Advocate for the opponent No.2 has produced his Closing of Evidence pursis vide Exh.60.

(8) That, following issues have been framed at Exh.13 for my determination.

ISSUES

(1) Whether claimant proved that the claimant sustained injuries on account of rashness or negligence on the part of the driver/s of the vehicle/s 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?

(9) My findings to above issues are as under:-

(1) In affirmative.

(2) As per final order.

(3) As per the final order.

R E A S O N S

(10) **ISSUE NO.1: NEGLIGENCE:**

It is well settled principle by catena of judicial pronouncement that while deciding the point of negligence, it has to be borne 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 case of **Anita Sharma v/s. The New India Assurance Co. Ltd.** & Anr.–2021-0-AIR (SC) 302.

(11) To substantiate the claim, the applicant has produced copy of Discharge Card of Sai Krishna Hospital, Mahesana vide Exh.45, wherein in the history before the doctor, the fact of vehicular accident near Pansa (Danta) on 22/09/2018 at 11:00 P.M. mentioned. The applicant has filed his Examination In Chief on affidavit at Exh.22 corroborating the facts stated in the claim petition. Learned Advocate for the opponent No.1 has cross-examined the applicant, wherein he has admitted that motorcycle was driven by the opponent No.1 – Jenaji Punaji and he was pillion rider. It has been further admitted that as his brother in-law (Jijaji) was driven the motorcycle, he has not filed any complaint against him. Learned Advocate for the opponent No.2 has cross-examined the applicant, wherein he has admitted that he has not filed any complaint or Janvajog entry regarding accident. It has been further admitted that he was firstly taken to Ambaji government hospital, thereafter taken to Palanpur Civil Hospital and thereafter he was shifted to Sai Krishna Hospital, Mahesana, where he was admitted. It has been further admitted that due to excessive speed of motorcycle by the opponent No.1, the accident was occurred. It has been further admitted that he has not produced any document pertaining to his age and income.

Learned Advocate for the opponent No.2 has specifically raised dispute regarding involvement of vehicle and submitted that the injuries sustained to the applicant were not occurred in the vehicular accident and offending vehicle is also not involved in the accident. In the present case, the complainant has given the evidence that accident was occurred due to the vehicular accident on 22/09/2018. It has been further submitted that he was pillion rider of motorcycle involved in the accident and accident was occurred near village Pansa, Danta- Ambaji road and he has been given primary treatment at Ambaji Hospital and thereafter shifted to Palanpur Hospital and thereafter Sai Krishna Hospital at Mahesana. The applicant has produced treatment papers of Sai Krishna Hospital. On the other hand, the Insurance Company has examined its witnesses. Now, appreciating the evidence of witness examined at Exh.52- Dr. Piyush Amaratlal Modi, R.M.O. Ambaji Civil Hospital, wherein it is submitted that he is serving as RMO in Ambaji Civil Hospital since last three years i.e. from 2023. It has been further submitted that he bring with him papers of MLC case No.404 of Adhyashakti General Hospital, Ambaji, dated 22/09/2018 from the record of his hospital, which bears Sr. No.30650, wherein unknown person has been mentioned in the name of patient and was taken to hospital on 22/09/2018 at 12:05 in the noon. In the history, the vehicular accident has been mentioned. The said patient has been referred to Civil Hospital, Palanpur for further treatment. The said witness bring with him original case papers, which is produced vide Exh.59. Learned Advocate for the applicant has cross-examined the said witness of opponent No.2, wherein he has admitted that the patient brought to their hospital was partly unconscious. He has not treated the patient. The opponent No.2 has also examined its witness Dr. Alkaben Umesh Jhaveri vide Exh.55, wherein she has submitted that she is serving as Medical Officer in General Hospital at Palanpur since 2017. She has submitted that on 22/09/2018 she was remained present on her duty. She bring with her Transfer Chit, OPD case paper and indoor case papers, which are produced vide Exh.56. In all the said papers, the name of Thakor Chetanji Udaji has not been mentioned as patient. In the Refer Chit of Ambaji Hospital also, the name of Thakor Chetanji Udaji was not mentioned as patient. She has submitted that the same is written as unknown person. The driver of Ambaji Ambulance taken the unknown person to Cottage Hospital. Learned Advocate for the applicant has not cross-examined the said witness. No doubt, the name of unknown person written in the medical papers. However, in the oral evidence of applicant, he has specifically submitted that he was became unconscious. Now, considering the Written Statement filed by the opponent No.1, he has admitted the facts stated in the claim petition and requested to allow the present claim petition. Perusing the medical papers produced by the applicant, it clearly established that on the date, time and place as mentioned in the claim petition, the applicant sustained injuries in a vehicular accident. On the other hand, the opponent No.2 failed to prove that the said injuries sustained to the applicant were not occurred in the impugned accident. Perusing the documentary evidence produced on record, it clearly shows that the applicant sustained grievous injuries in a vehicular accident, which was occurred **upon sole negligence in driving on the part of driver of Motorcycle No.GJ-24-AG-4322 – opponent No.1** and hence, I answer Issue No.1 in affirmative accordingly.

(12) <u>ISSUE NO. 2 : QUANTUM OF COMPENSATION:-</u>

<u>Age & Multiplier:-</u> So far as age of the applicant is concerned, the applicant has produced copy of his Aadhaar Card along with the claim petition wherein the date of birth of the applicant has been mentioned as 02/05/1982 and accident was occurred on 22/09/2018, which shows that the applicant was aged 37 years at the relevant time of accident. Thus, considering age of the deceased between 36 to 40 years at the time of accident, claimants are entitled to get multiplier of **'15'**, as held by the Hon'ble Apex Court in "National Insurance Co. Ltd. Vs. Pranay Sethi & Ors., reported in 2017 SC – 1050.

(13) **Income:-** So far as source of income of the applicant, the applicant has produced Examination In Chief on affidavit at Exh.22 and submitted that he was earning more than Rs.10,000/- per month at the relevant time of accident. Learned Advocate for opponent No.2 has cross-examined the applicant, wherein he has admitted that he has not produced any document showing his income at the relevant time of accident. Thus, applicant failed to prove his source of income. It is also cardinal principle of law that when there is no proof of income of victim of the motor accident, his/her monthly income can be assessed on the basis of minimum wage prevailing at the relevant time of accident. Since, the applicant failed to prove his monthly income, and therefore, considering the rate of minimum wage prevailing at the relevant time of accident, the income of **Rs.7,904/-** is required to be considered as monthly income of the applicant.

(14) The applicant has produced his Disability Certificate vide Exh.42, wherein the Doctor has assessed permanent disability of as 23% of the body as a whole, and hence, disability is considered as 2**3%** of the body as a whole. As discussed above, considering the age of the applicant as 37 years, monthly income of Rs.7,904/-, permanent disability 23% and multiplier of 15, the applicant is entitled towards future loss of income of **Rs.3,27,240/-** [Rs.7,904 X 23% = Rs.1,818/- X 15= Rs.27,270 X 12 months =

Rs.3,27,240/-]. Looking to the injuries and period of recovery, the applicant is entitled to get compensation under the head of actual loss for 3 months, which comes to **Rs.23,712/-**, which is awarded to the applicant under the head of actual loss of income. Looking to the nature of injuries, the applicant had suffered pain, shock and suffering, hence in my opinion, applicant is entitled **Rs.15,000/-** towards pain, shock and suffering. Considering the disability and treatment as an indoor patient for some days, in my opinion, applicant is entitled **Rs.15,000/-** towards special diet charge and attendant charges. The The applicant has also produced Medical Bills vide Exh.48 & 49 of **Rs.42,500/-**, which is awarded to the applicant under the head of Medical Expenses.

(15) Therefore, the applicant is entitled for various amount of compensation as follows:-

Amount	**Head**
Rs.3,27,240/-	Towards future loss of income.
Rs.23,712/-	Towards actual loss of income
Rs.15,000/-	Towards pain, shock and suffering
Rs.15,000/-	Towards S.A.T. charges.
Rs.42,500/-	Towards medical expenses.
Rs.4,23,452/-	Total compensation under all heads.

(16) Here, in the present case, the applicant has claimed compensation of Rs.2,50,000/- from the opponents. However, the awarded amount is more than the amount claimed in the claim petition. In this regard, it is pertinent to refer the judgment of Hon'ble Supreme Court of India in the case of ***Nagappa v. Gurudayal Singh, reported in [2003 (2) SCC 274]***, wherein the Hon'ble Supreme Court held that "*there is no bar for the Claims Tribunal to award compensation in excess of what is claimed, particularly when the evidence which is brought on record is sufficient to pass such award. It was further held that it is for the Tribunal to determine just compensation from the evidence brought on record despite the fact that the claimant has not specifically stated the different amounts claimed under different heads of claim. If evidence on record justifies passing of such award, the claim cannot be rejected solely on the ground that the claimant has restricted his claim".* Thus, applicant is entitled to get compensation of **Rs.4,23,452/- (Rupees Four Lakh Twenty Three Thousand Four Hundred Fifty Two only)** under all heads.

(17) INTEREST:-

In the present claim petition, the applicant has claimed interest with cost of petition. However, in view of the reported judgment of the Hon'ble Apex Court in the case of ***Savitha Vs. Cholamandalam MS General Insurance***

Co. Ltd., & Ors., reported in 2020 ACJ 2157, wherein the Hon'ble Apex Court has held that, the claimant is entitled to get interest at the rate of 6% per annum, but but looking to the peculiar circumstances, the claimant would be entitled to get interest at the rate of 7% on the amount of compensation from the date of filing of the claim petition till its realization. Hence, I award interest at the rate of 7**%** p.a. on the amount of compensation accordingly.

(18) <u>LIABILITY TO PAY THE COMPENSATION:-</u>

So far as question of payment of liability is concerned, as discussed in Issue No.1 that accident was occurred upon sole negligence in driving on the part of driver of the motorcycle No.GJ-24-AG-4322 – opponent No.1 involved in the accident and applicant has produced copy of Insurance policy of the said vehicle vide Exh.52, which was in force for the period from 31/01/2018 to 30/01/2019 and accident was occurred on 22/09/2018. Thus, it shows that insurance policy of the Motorcycle was in force at the relevant time of accident which was insured by the opponent No.1 with the opponent No.2. In view of the above facts of the case, the opponent No.1 as being driver & owner and opponent No.2 as being an insurer of vehicle Motorcycle, both are held liable to pay compensation to the applicant jointly and severally.

(19) ISSUE NO.3.

In view of the above findings of issues no. 1 and 2, I pass the following order:

ORDER

1. The claim petition is hereby allowed.
2. That, applicant is entitled to get compensation of **Rs.4,23,452/- (Rupees Four Lakh Twenty Three Thousand Four Hundred Fifty Two only)** with interest at the rate of 7% p.a. from the date of filing of the claim petition till its realization with proportionate costs.
3. That, both the opponents are held liable to pay compensation to the applicant jointly and severally.
4. The opponents are hereby directed to deposit the aforesaid amount in the office of the Tribunal within one month from this order.
5. The opponents are directed to deposit the awarded amount with cost and interest as per the directions given by Hon'ble the Apex Court in Writ Petition (C) No.534 of 2020 in the case of ***Bajaj Allianz General Insurance Company Ltd. V/s. Union of India and Ors.***
6. Interim amount, if any, paid to the claimant be adjusted at the time of final disbursement. The deficit court fees, if any, be deducted from the awarded

amount.

7. Out of total awarded amount of compensation awarded to the applicant, 70% amount is to be kept in fixed deposit in any nationalized bank or in a post office for a period of five years with a direction to the Bank or Post Office not to grant any loan or advance on the said F.D.R. without prior permission of this Tribunal. However, claimant shall be at liberty to withdraw the periodical interest on the said F.D.R. as per rules of the Bank or Post Office, and the remaining 30% amount shall be paid to the claimant by A/c. payee cheque, after due verification.

8. Award be drawn accordingly.

Signed and pronounced in the open Court today on this 7th day of April, 2026 at Mahesana.

Date: 07.04.2026
Place: Mahesana.

[Ambrish Laljibhai Vyas]
M.A.C.T (Main), Mahesana.
UIC No.GJ00508