Filing Date	06-08-2016
Registered Date	06-08-2016
Decided on	08-06-2026
Duration :	Year-Month-Day
	09 - 10 - 02

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

M.A.C.P. NO. 201 of 2016.

Exh.:- 56

<u>Petitioner /Claimant</u> :-

PATEL PURIBEN PARSOTTAMBHAI

Age : 46, Occupation : Agriculture/Animal rearing

Resi. Bariyaf, Ta. Bechraji, Dist. Mahesana.

<u>VERSUS</u>

<u>Opponents</u> :-

(1) Patel Ganpatbhai Prahladbhai

The Driver of Metador No. GJ-18-T-1978

Age : Adult, Occupation : Driving,

Resi. Vanpardi, Ta. Mandal, Dist. Ahmedabad.

(2) Patel Dalsukhbhai Prahladbhai

Owner of Metador No. GJ-18-T-1978

Age : Adult, Occupation : Business,

Resi. Vanpardi, Ta. Mandal, Dist. Ahmedabad.

(3) Patel Kanubhai Ishwardas

Driver & Owner of Mahindra & Mahindra

Tempo No.GJ-02-VV-3772 ,

Resi. Bariyaf, Ta. Bechraji, Dist. Mahesana.

(4) United India Insurance Co.

Insurance Company of Mahindra & Mahindra

Tempo No.GJ-02-VV-3772

Address : Near Gopinala, Opp. Hanuman Temple, Mahesana.

Subject :- Claim Petition U/s. 166 of The Motor Vehicle Act,1988 For Claim of Rs. 1,00,000/- (One Lakh Only) .

APPEARANCE

Mr. B. T. Patel : Learned Advocate for the Petitioner

Mr. M. N. Bhavsar : Learned Advocate for the Opponent No.1 & 2

NIL : Opponent No.3 remain absent

Mr. S.R.Sharma : Learned Advocate for the Opponent No. 4

-:: <u>J U D G M E N T</u> ::-

1. This petition under Section 166 of the Motor Vehicle Act, 1988 (here-in-after referred to as 'the Act') has been instituted by Claimant seeking compensation to the tune of Rs. 1,00,000/- (Rupees One Lakhs only) along with interest of 18% per annum from the date of filing of the petition.

2. As per the case, On 20.01.2014, the Petitioner, along with family members including her daughter, sister-in-law (Jethani), and sister-in-law (Derani) Smt. Bhartiben, were returning to their residence after attending a wedding ceremony at the Green park Society, Mehsana. The applicant was traveling in a Tempo bearing registration number GJ-2-VV-3772, owned by the Petitioner's brother-in-law, Shri Patel Kanubhai Ishwardas. The incident transpired at approximately 5:00 PM while the vehicle was navigating the bypass circle en route from Dediyasan to Nugar. It is alleged that a Matador vehicle, bearing registration number GJ-18-T-1978 (**hereinafter referred to " offending vehicle "**) , approached from the rear at an excessive and high rate of speed. Due to the rash and negligent driving of the Matador operator, the vehicle collided violently with the rear aspect of the Petitioner's Tempo. As a direct consequence of this

accident, the Petitioner sustained grievous injuries, specifically to the facial region, resulting in the removal of five teeth and injuries to the nose and lips. Other occupants of the vehicle also sustained various injuries. The Petitioner was immediately rushed to the hospital of Dr. Vinodbhai Patel for primary medical intervention and was subsequently admitted to the facility of Dr. Kiritbhai Patel for further specialized treatment.

3. Notice was issued to opponents and it was served.

As per record Opponent no.1 and 2 appeared through his learned advocate Mr.M.N.Bhavsar however he has not filed any written statement and therefore his right to file written statement is closed.

As per record Opponent no.3 appeared before tribunal and asked adjournment & he has not filed any written statement and therefore his right to file written statement is closed.

The learned advocate Mr.S.R.Sharma appeared on behalf opponent No.4 and filed his written statement vide Exh.11 in this matter.

4. Following oral as well as documentary evidences are produced /Submitted by Petitioner / Claimant on record to decide this matter:

ORAL EVIDENCE

Sr.No.	Particular	Exh.
1	Affidavit of Claimant.	23

DOCUMENTARY EVIDENCE

Sr. No.	Particular	Exh./ Mark
1	Copy of Complaint	31
2	Copy of panchnama of scene of offence	32
3	Injury certificate of applicant	38
4	Copy of driving license of driver of Tempo No. GJ-02-VV-3772	35
5	Copy of R.C.Book of Metador No. GJ-18-T-1978	34
6	Copy of registration certificate as owner	36
7	Bills of operation @ Rs.19,900/-	40
8	Disability certificate	39
9	Medical bills @ Rs.8,155/-	33
10	Copy of charge-sheet	37

Petitioner / Claimant / Claimant has not submitted any other oral and documentary evidence in this matter.

5. Opponent no.1 and 2 has not submitted any oral and documentary evidence in this matter. Tribunal has closed their right to submit evidence in this matter.

6. Opponent no.3 has not submitted any oral and documentary evidence in this matter. Tribunal has closed his right to submit evidence in this matter.

7. Following oral as well as documentary evidences are produced /Submitted by Opponent no.4 on record to decide this matter:

ORAL EVIDENCE

Sr.No.	Particular	Exh.
	- N I L -	

DOCUMENTARY EVIDENCE

Sr. No.	Particular	Exh./ Mark
1	Copy of Insurance policy of vehicle No. GJ-02-VV-3772	52

Opponent no.4 has not submitted any other oral and documentary evidence in this matter.

8. Ld. Advocate of Petitioner / Claimant has advanced his oral arguments in this matter that, Petitioner / Claimant has proved his case and opponent no.1 to 4 are jointly and severally liable to pay compensation as per claimed in the petition.

9. Ld. Advocate of opponent no.1 & 2 has advanced his oral arguments in this matter that, Petitioner / Claimant is fail to prove his case. There is no negligence of opponent no.1. Claimant was traveling through good vehicle and due negligent driving of opponent no.3, this accident is occur. therefore, present opponent no.1 & 2 are not liable to pay any compensation in this matter.

10. Opponent no.3 remain absent and he has not submitted any oral or written argument in this matter.

11. Ld. Advocate of Opponent no.4 has submitted his oral argument in this matter, short crux of it is, **Claimant was traveling in Tempo No. GJ-02-VV-3772 which is goods vehicle and its used for transferring the goods in the vehicle. It can not be used as passenger vehicle**. However **the owner of the Tempo has used as passenger vehicle and transporting the 7 to 8 persons in his Tempo. Therefore this is breach of condition and the insurance company is not liable to pay any compensation to the applicant**. Moreover he has also argued that once it is admitted proof that applicant is traveling in goods vehicle as passenger then the opponent No.4, the insurance company requested to this tribunal to exonerate from the liability to pay compensation & in support of his argument Ld. advocate of opponent no.4 rely on citation,

A. First appeal No.992/2010, Gujarat High Court, United india insurance co. Ltd. Vs.Barot Natuverlal Died through his legal heirs,

B. 2018 ACJ Page No.1466, Supreme court, Nishan Singh and others Vs. Oriental Insurance Co. Ltd. and others.

12. In view of the aforesaid pleadings, following issues were framed by this Tribunal at Exh. 15.

1. Whether it is proved that the Claimant has sustained injuries on account of the rash and Negligent driving on the part of the driver of the vehicle/s involved in the accident ?
2. What amount, if any is the Claimant entitled to get by way of compensation and from which of the opponent ?
3. What order and Award ?

13. My findings on above issues are as under :-

1. Issue No.:1 In Affirmative.
2. Issue No.:2 In Partly Affirmative.
3. Issue No.:3 As per final order.

My Detail reasons for above finding is here under;

-:: R E A S O N S ::-

Issue No.1 :-

Negligence :-

14. While deciding the point of negligence, it has to be borne in mind that negligence is required to be proved in claim Petition under Section 166(1) 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 **(1) Bimla Devi Vs. H.R.T.C. Reported in AIR 2009 SC 2819** and **(2) Parmeshwari Devi Vs. Amir Chand, report in 2011 (11) SCC 618.** Therefore, Tribunal has to consider evidence in view of above principle in this matter while deciding issue of negligence.

15. That the applicant had filed examination-in-chief in form of affidavit vide Exh.23 and stated as averred in the claim petition. As per the case, The incident transpired at approximately 5:00 PM while the vehicle was navigating the bypass circle en route from Dediyasan to Nugar. It is alleged that a Matador vehicle, bearing registration number GJ-18-T-1978, approached from the rear at an excessive and high rate of speed. Due to the rash and negligent driving of the Matador operator, the vehicle collided violently with the rear aspect of the Petitioner’s Tempo. As a direct consequence of this accident, the Petitioner sustained grievous injuries, specifically to the facial region, resulting in the removal of five teeth and injuries to the nose and lips. Other occupants of the vehicle also sustained various injuries.

Regarding the issue of negligence, the Tribunal has scrutinized the First Information Report vide Exh.31 and the Panchnama of the scene of offence vide Exh.32. It is an admitted fact that the offending Matador, bearing registration number GJ-18-T-1978 (**offending vehicle**) , collided with moving Tempo from the rear. The Panchnama clearly indicates that the impact was of such high intensity that it caused grievous injuries to the occupants, a fact further corroborated by the Medical Bills vide Exh.33 and the Disability Certificate vide Exh.39.

Crucially, the Charge-sheet vide Exh.37 has been filed by the Investigating Agency against the Opponent No. 1, the driver of the Matador (**offending vehicle**) after a thorough investigation. In motor accident claim jurisprudence, the filing of a charge-sheet against a driver is prima facie evidence of their negligence. Further more, the conduct of the Opponent No. 1 in fleeing the spot immediately after the occurrence, as noted in the Panchnama. The driver of the Matador (**offending vehicle**) had a duty of care to maintain a safe distance and control over his vehicle; the rear-end collision in itself establishes a failure to exercise such care.

Moreover, it is also required to be considered that the driver of the offending vehicle ought to have taken more care and caution, while driving on the road, if the driver of offending vehicle would have taken proper care and driven his vehicle in moderate speed with due care, he would have avoided the accident but they could not do so, which resulted into occurrence of the accident.

Further, in this case, neither Driver or owner of offending vehicle as well as Driver of Tempo has given any deposition on oath on point of accident or on point of negligence or on point of liability of compensation.

Moreover non of insurance company come forward and applied to the tribunal for joining him as a necessary and proper party. Therefore, In absence of deposition of driver of the offending vehicle, Tribunal has to consider that, Driver of offending vehicle is hiding truth of accident and negligence.

Hence, in view of judgment reported in **1986 ACJ 331 (Punjab & Haryana High Court), 2013 (3) TAC 17 (Karnataka High Court), 2007 ACJ 1723 (Madhya Pradesh High Court) and 2010 ACJ 15 (Gujarat High Court),** and above fact and circumstances of this case, adverse inference is required to be drawn against the driver of offending vehicle.

Thus, This Tribunal is of the considered opinion that the accident had occurred due to sole negligence of the driver of the offending vehicle i.e. Metador No. GJ-18-T-1978 (**offending vehicle**) . Thus, as per the above discussion, my answer to the issue No. 1, is affirmative.

Issue No.3 :-

<u>For Age</u> :-

16. To prove the age of the Claimant, the Claimant has not produced his birth certificate or any other reasonable documentary evidence in this matter. However the applicant has submitted the copy of Aadhar Card at the time of instituting this application along with this claim petition. Looking to the Aadhar Card, the date of birth of applicant is shown as 01.01.1970. The accident occurred on 20.01.2014. Therefore, the age of the applicant was 44 years and 19 days on day of accident. Hence, this Tribunal is considering the age of applicant as **44 years** at the time of accident.

This Tribunal goes, by the aforesaid statement and documentary evidence submitted by the Claimant and as per the judgment reported in **Sarla Verma Vs. Delhi Transport Corporation AIR 2009, SC 3104,** the **multiplier of "14"** would apply in this case .

<u>For Income</u> :-

17. As per the Claimant, Injured was doing agricultural and animal rearing work and she was earning Rs.5,000/- per month. However in support of her version she could not produced any cogent and reliable evidence to prove her income. So, present applicant is failed to prove that she was doing agricultural and animal rearing work and she was earning Rs.5,000/- per month on date of accident. Therefore, in these circumstances if we consider Rs.5,000/- income per month as per petition then it will be improper and not

tenable.

Further, without any reasonable evidence if income is considered in toto as per deposition then it will be injustice to opponent. Therefore, Looking to fact and circumstance of case, if tribunal is considering income of Rs.4,000/- per month as a income of injured then it will be just and proper.

Disability :-

18. Learned Counsel for the Petitioner has produced Disability Certificate at Exh.39, in which, the disability is shown as 30% for facial disfigurement and disability but both advocate are agreed on point that if tribunal is considering 20% disability on body as a whole. But looking to scenario of injury and disability certificate issued by doctor describe majorly on disfigurement and if we consider all fact and treatment taken by claimant then 15% disability body as a whole is just and proper because claimant has not examine doctor who has issued this certificate. Therefore, This tribunal is considering 15% Disability for body as whole of injured Claimant.

Hence, this Tribunal comes to the conclusion that the considering the aforesaid proposition as well as production of documentary evidence to substantiate Disability, in the considered opinion of this Tribunal, **the disability of the Claimant can be considered as 15% body as a whole which appears to be just and proper for both parties of**

this petition.

<u>Medical Expenses</u> :-

19. The Claimant has submitted the original bills of medical expenses which are produced on record vide Exh. 33 for medical expense of Rs.8,155/- and operation charge of Rs.19,900/- at Exh.40 amounting to total expense of Rs.28,055/-. Hence, this Tribunal comes to the conclusion that the Claimant is entitled to Rs.28,055/- amount as medical expenses. This point is decided accordingly.

<u>P.S.S. (Pain, Shock & Suffering) S.A.T. (Special Diet, Attendant Charges, Transportation)</u> :-

20. Overall appreciation of evidence on the record and looking to the Disability Certificate, petitioner had suffered facial disfigurement and teeth removal and treated for the same and also sustained multiple injuries. Therefore, this Tribunal comes to the conclusion that the amount for Pain, Shock And Suffering Rs.15,000/- and Special Diet, attendant charges and Transportation etc. Rs.7,500/- would be just compensation under these heads on this count in the absence of any specific evidence on this score.

<u>Actual Loss</u> :-

21. As far as, amount towards Actual Loss towards income incurred by the Claimant is concerned, it is coming on record

in the deposition of Claimant at Exh.23 that Claimant has declare that she was unable to work for period of Six to seven months. But Claimant has not submitted documentary evidence which shows that she was completely unable to work during treatment and up to six to seven months. Therefore, This Tribunal comes to the conclusion that Actual Loss of income of 1 Month would be just compensation under this head on this count and the Claimant would be entitled to Rs.4,000/- [Rs.4,000/- per month x 1 (month).]

<u>Future Economic Loss</u> :-

22. In view of above discussion, this tribunal considering that, Claimant has future loss as calculated here under;

Sr. No.	Particulars	Amount
1	Monthly income Rs.4000/- X 12 month	Rs. 48,000/- Yearly income
2	Rs.48000/- (yearly income) X 14 (multiplier) X 15% (Disability)	Rs.1,08,000/-

Thus, the amenity / future income loss comes to [Rs.48,000/- X 14 (multiplier) X 15 (disability) /100] = Rs.1,08,000/-.]

23. In view of the above fact, circumstances and discussion made here in above the Claimant is entitled for the following

amount as compensation.

Heads	**Amount Awarded**
Future Economic loss	Rs.1,08,000/-
Loss of income during treatment (1-month)	Rs.4,000/-
Medical Expanses (not claimed)	Rs.28,055/-
Pain, Shock and suffering	Rs.15,000/-
Special Diet, Transportation & Attendant Charges.	Rs.7,500/-
Total Compensation.	**Rs.1,55,355/-**

24. In this claim petition, Claimant has claimed a sum of Rs. 1,00,000/- but after calculating all the heads, claimant is entitled for Rs.1,55,355/- as a compensation.

In this claim petition, the claimant has claimed a sum of Rs. 1,00,000/- as compensation from opponent. But after calculating all heads, amount of compensation will be of Rs.1,55,355/- (Rupees One Lakh Fifty-five Thousand Three hundred and Fifty-five Only). So, claimant has claimed amount of Rs.1,00,000 (Rupees One Lakh only) is just and proper amount. Therefore, Clamant has claimed only Rs.1,00,000/- (Rupees One Lakh only) as compensation so This amount is just and proper, Therefore, claimant is entitled for Rs.1,00,000/- (Rupees One Lakh only) as just & proper compensation as prayed by her in claim petition.

Therefore, in the light of prayer of Claimant in her claim petition, and discussion of merits & evidence, Claimant is entitled to **Rs.1,00,000/-** (Rupees One Lakh Only). Therefore, I decided Issue No. 2 accordingly.

<u>For Liability</u> :-

25. As per pleading in petition by petitioner/claimant that, she was traveling through Mahindra & Mahindra Tempo No. GJ-02-VV-3772 and offending vehicle is Matador No. GJ-18-T-1978, so in this accident there was involvement of two vehicle. Opponent no.1 & 2 has not disclosed name of insurance company of Matador No. GJ-18-T-1978. Further, Opponent no.3 is driver and owner of Mahindra & Mahindra Tempo No. GJ-02-VV-3772 which is goods vehicle. in the present case, Mahindra & Mahindra Tempo No. GJ-02-VV-3772 was not loaded with goods & present claimant was not owner of goods or labourer for loading /unloading goods from this Tempo. Therefore, use of goods vehicle for passenger shows self negligence of opponent no.3. Further, This Tribunal has already arrived at a categorical finding that the accident was the result of the sole, rash, and negligent driving on the part of the driver of the Matador No. GJ-18-T-1978 but at the same time opponent no.3 (owner & driver of Mahindra & Mahindra Tempo No. GJ-02-VV-3772) has used good vehicle in passenger transportation, so negligence of opponent is also required to consider for payment of compensation.

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Further more, a perusal of the record reveals that while the insurance policy for the Tempo was produced, the evidence unequivocally indicates that the said vehicle, though registered as a "Goods Carriage Vehicle," was being utilized for the transportation of passengers at the time of the accident. Such an act constitutes a fundamental breach of the terms and conditions of the insurance policy, as well as a violation of the statutory provisions of the Motor Vehicles Act. Since no negligence is attributed to the Tempo, and given the proven breach of policy conditions, no liability can be fastened upon Opponent No. 4 (Insurance Company of the Tempo).

Further, Ld. Advocate of opponent no.4 has relied on citation

A. First appeal No.992/2010, Gujarat High Court, United India insurance co. Ltd. Vs. Barot Natuverlal Died through his legal heirs,

B. 2018 ACJ Page No.1466, Supreme court, Nishan Singh and others Vs. Oriental Insurance Co. Ltd. and others.

If we consider principle laid down in this citation, then we has have to consider that, opponent no.3 has used goods vehicle for passenger transportation so owner & driver has made breach of terms & condition of insurance policy. Therefore, in light of principle laid down in these citation opponent no.4 insurance company is required to discharged and exonerated from the liability to pay any compensation in this petition. Accordingly, Opponent No. 4 is hereby discharged and exonerated from the liability to pay any compensation in this petition.

As regards the offending Matador No. GJ-18-T-1978, it is pertinent to note that no insurance policy has been placed on record by the opponent no. 1 & 2 to show that the vehicle was covered by a valid contract of indemnity on the date of the accident. In the absence of a valid insurance cover, the statutory liability remains with the tortfeasor and the owner. Therefore, Opponent No. 1 (Driver) and Opponent No. 2 (Owner) are held jointly and severally liable to satisfy the award. They are directed to pay the determined compensation amount to the applicant, as they have failed to prove that the risk was shifted to any insurance solicitor through a valid policy of insurance.

Hence, looking to the evidence in this matter opponent no.1, 2 & 3 are jointly and severally liable to pay the total awarded amount to the Claimant. Hence, I decide issues No.2 partly in affirmative.

<u>For Interest</u> :-

26. Now so far as this is Issue is concerned, the Honble Apex Court after considering various Judgments, has held that the award should be just Compensation and not a Bonanza.

27. By considering Section 171 of Motor Vehicle Act, the issue with regard to grant of interest has been discussed by the Honble Apex Court in the case of **Dharampal Versus Uttar Pradesh State Road Transport Corporation, reported in 2008 (12) SCC 208,** wherein, the Apex Court was of the view that Award of interest would normally depend upon the bank rate prevailing at the relevant time. Furthermore, the Apex Court in the case of **Subulaxmi Versus M.D., Tamil Nadu State Transport Corporation reported in 2012 (10) SCC 177** has held that award of interest would normally depend on the bank rate prevailing at the time of accident.

28. Thus, from the above, it can be cull out that the award of interest would not only depend on the facts and circumstances of the case but also award of interest would normally depend on the bank rate prevailing at the time of accident. If 7.0% interest is granted/awarded then it will be just and proper for both parties of this petition. Hence, **Claimant is entitled to 7.0 % interest from date of filing of claim petition till realization**, and in view of the same final order is passed in the interest of justice:

-:: <u>O R D E R</u> ::-

The claim petition is partly allowed.

Petitioner / Claimant is entitled to Rs.1,00,000/- (Rupees One Lakh Only) from Opponent Nos. 1, 2 & 3 who are jointly & severally liable to pay awarded amount along with the proportionate cost with interest at the rate of 7. 0 % per annum from the date of filing of the petition till its realization.

Opponent No. 4 insurance company is hereby exonerated from the liability to pay any compensation in this petition.

The opponent no. 1, 2 & 3 are hereby directed to deposit in the office of this Tribunal the above amount of award, after deducting the amount of interim compensation, if any, paid u/s.140 of M. V. Act, within one month from the date of this order in the below Account through RTGS or NEFT.

Branch: State Bank of India, Specialized Government Branch, Mahesana. **A/c Name:** Additional District Judge, Mahesana. **A/c No.:** 40751534495 **Branch Code :** 13538. **IFSC:** SBIN0013538 **MICR :**384002005

On such deposits being made, the opponent shall submit a letter to the Registry of the Claims Tribunal, Mahesana enclosing a copy of the said bank advice, in the format, in view of the order passed by Hon’ble Supreme

Court of India in Writ Petition (Civil) No.534/ 2020 issuing directions to be followed, and accordingly directed to follow the format prescribed in No. (ix) under the heading "PROCEDURE BEFORE PASSING AWARD" in the judgment of Madras High Court in the case of Divisional Manager Vs. Rajesh, 2016 SCC Online Madras, 1913.

On depositing the above amount of award by the opponent in this Tribunal, the amount of Court Fee Stamp, if recoverable on the awarded amount, be recovered from the awarded amount and the same be taxed as the costs of the petition.

From the total awarded amount, 70 % be invested as fixed deposit in any Nationalized Bank or Post Office for initial period of FIVE YEARS and the remaining 30 % amount be paid to Petitioner / Claimant by RTGS / NEFT .

Award, be drawn accordingly.

Investments, as above, shall be encumbered with following terms and conditions:-

1. The said amount shall be invested with any of the nationalized banks of the choice of the applicants in Fixed Deposit Receipt Account.
2. The interest on the above Fixed Deposit Receipt Account as and when it becomes payable monthly, quarterly, half- yearly or annually, as agreed to, shall be paid to the applicant.

3. No facility by way of loan, overdraft or cash credit shall be available on the above investment and the Bank shall not allow any such transaction, encumbering the investment or on the basis of the security of the same.
4. The Bank shall not permit the applicants to withdraw the said amount prior to its maturity or without prior permission of this Tribunal.
5. The Bank shall intimate to this Tribunal the particulars of the investment viz., number of Fixed Deposit Receipt, name of holder and the date of maturity immediately after issuance of Fixed Deposit Receipt in this case.
6. At the end of the period aforesaid, the Bank shall pay the principal amount to the payee, the concerned applicant.

This order is Signed and pronounced in open court on Day-08, Month- June, in the year- 2026.

Date : 08 / 06 / 2026 (M. F. Khatri)

Place : Mahesana 2nd Additional District Judge &

M.A.C.Tribunal (Aux.)

Mahesana.

UID GJ00691