

GJMH010035182022



Received : 21.10.2022
on
Registered : 21.10.2022
on
Decided on: 06.04.2026
Duration : Yrs. Months Days
03 05 16

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

***M.A.C.P No.220 of 2022
Exh.34***

CLAIMANT : **Thakor Sonaji Ramsangji;**
Age: 57 years,
Occ.: Agriculture & Animal Husbandry;
Residing at present : Kheralu, Mahesana.
Permanent residence at: Motowas, Delwada,
Sipor, Ta. Kheralu, Dist. Mahesana.

VERSUS

OPPONENT:

[Owner of Bus No.GJ.18.Z.2001]

(1) Gujarat State Road Transport Corporation.

**Claim petition for compensation of Rs.15,00,000/-
under Section-166 of Motor Vehicles Act, 1988.**

APPEARANCE:

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- Mr. V.U.Thakor, Ld. Advocate for the claimant.
 - Mr. K.L.Rana, Ld. Advocate for the opponent.
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:: J U D G M E N T ::

- 1) The claimant has filed this claim petition under Section-166 of the Motor Vehicle Act, 1988, seeking compensation of Rs.15,00,000/- (Rupees Fifteen Lakhs Only) for the injuries sustained by the claimant in the 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 27.09.2022, the claimant was travelling as a pillion rider on the motorcycle of one Dharmaji Sonaji and he was travelling to his farm, at that relevant point of time, at about 6:30 p.m. near the railway track way near the bus station of Kheralu, there was a sharp turn from where the S.T. Bus No. GJ.18.Z.2001 being driven in rash and negligent manner, endangering the lives of people, came in speed and dashed with the motorcycle of the claimant from behind, due to which, the claimant suffered deep painful bodily injuries and the claimant was rushed to hospital.

(II) As a result of this accident, the claimant sustained injuries to the left ankle and below knee fracture tibia & fibula as well as other bodily injuries, for which, the claimant had

undergone operation.

- (III) The First Information Report of the above noted accident was given by the claimant against the opponents driver, at Kheralu Police Station, Dist. Mahesana vide I CR No.11206023220621/2022.
 - (IV) It is averred that claimant was taken to Civil Hospital at Vadnagar and thereafter, he was treated at Hope Spine & Joint Clinic, Mahesana.
 - (V) In background of the above facts, the claimant has claimed that he was of 57 years at the relevant time, he earned about Rs.30,000/- per month by doing agriculture work and Animal Husbandry.
 - (VI) He 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. As an aftermath of the injuries sustained in the accident and disablement thereof, the claimant is unable to do day-to-day routine work and therefore, he has claimed above stated compensation.
- 3) The summons of the claim petition were served upon the opponent. The opponent has appeared through Id. Advocate Mr. K.L.Rana and subsequently filed reply in

defence vide Exh.9 and by way of the said written statement, the opponent has denied all the facts of negligence, age, occupation, income and occurrence, or the involvement of vehicle and the liability to pay the compensation to the claimant and it is prayed to reject the claim petition.

- 4) The Tribunal, upon the pleadings of the parties settled the following issues vide **Exh:10** as under:

:: ISSUES ::

- I. 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 ?
- II. What amount, if any is the claimant entitled to get by way of compensation and from which of the opponent?
- III. What order and decree ?

- 5) The findings to the above issues are as under :

- (I) In affirmative.
- (II) As per final order.
- (III) As per final order.

- 6) In support of the claim petition, the claimant has laid the following oral and documentary evidence:

Sr.	Evidence	Exh./
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No.		Marks
	Oral Evidence	
1	Affidavit of Chief Examination of claimant	16
	Documentary Evidence	
1	Copy of FIR	19
2	Copy of Panchnama of place of occurrence	20
3	Copy of Charge-sheet	21
4	Injury Certificate	22
5	Disability Certificate	23
6	Copy of Medical Bills	24
7	Discharge Summary	25
8	Copy of Aadhaar Card of Claimant	26
9	Copy of Pan Card of the claimant	27
10	Copy of Bank Passbook of the claimant	28
11	Closing Pursis	29

- 7) In support of their defence, the opponents have laid the following oral and documentary evidence:

Sr. No.	Evidence	Exh./ Marks
	Oral Evidence	
1	Deposition of witness – Chaudhari Rohitkumar Kadabhai (Driver of S.T.Bus).	30
	Documentary Evidence	

1	Closing Pursis	32
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7.1 Learned advocate for the claimant has argued that the FIR and chargesheet filed against the driver of the opponent Bus and thus, it is submitted that there is negligency on the part of the Bus driver of the opponent. The fact of negligence also proved by the oral evidence of the claimant. He also request to consider minimum wages for calculating the amount of compensation. It is further submitted that the claimant was a pillion rider on the motorcycle and therefore, there is no question to decide his negligency.

7.2 Learned advocate for the opponent has opposed the submissions made on behalf of the claimant and he has orally submitted that disability of serious nature is not caused to the claimant and the said accident has occurred due to the negligency of the rider of the motorcycle and therefore, this is a case of contributory negligence, The driver of the S.T.Bus has submitted his deposition vide Exh.30, wherein, he has deposed that the said accident has not taken place due to his negligence and he has denied the fact that he was driving the bus in the wrong side. Hence, he has prayed to dismiss the present claim petition.

8) Issue No.I

Negligency:

It is settled position of law that, while deciding the point of

negligency, Tribunal has to borne in mind that, negligency 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 – Thakor Sonaji Ramsangji has been examined to prove the case of his side. He has reiterated the facts as mentioned in the claim petition. In the cross-examination the claimant has stated that at the time of accident, he and one another man was travelling on motorcycle and the claimant was pillion rider. The claimant has deposed in his chief examination that the motorcycle was dashed from behind. He has deposed that by doing agricultural and animal husbandry work he is earning monthly income of Rs.30,000/-, however, he has not produced any documentary evidence in connection to his monthly salary. He has admitted that the road where the accident has occurred is spacious and two vehicles can easily cross each other. He has admitted that the accident has occurred due to the negligence of the driver of the S.T.Bus. While looking to the true-copy of the police papers such as an FIR at **Exh:19**, it clearly suggests that the FIR has been given by the claimant himself. Perusing the copy of Panchama produced by the

claimant vide **Exh:20**, it appears that, the accident has occurred at the place of accident mentioned in the claim petition. Injury certificate of the claimant has also been produced vide **Exh:22**, which indicates that, the claimant has sustained injuries to the left ankle and below knee fracture tibia & fibula as well as other bodily injuries. The claimant has also produced Disability Certificate vide Exh.23, wherein, it is mentioned that the claimant has sustained 32% disability of the left lower limb. All these evidence and material point out that the injuries occurred due to the vehicular accident involving the S.T.Bus.

Considering the FIR and Panchama, it appears that present accident was occurred while the claimant was travelling to his farm on motorcycle, at that relevant point of time, at about 6:30 p.m. near the railway track near the bus station of Kheralu involving the offending S.T.Bus vehicle. From evidence produced on record, it can certainly be said that, if the driver of S.T.Bus had taken a little care and if he was remained attentive while driving his vehicle, he could have averted this accident. In the chief examination, the S.T. bus driver has stated that the criminal offence is registered against him and the charge-sheet filed. He has further deposed that the said accident has not taken place due to his negligence and he has denied the fact that he was driving the bus in the wrong side. As per the averments made in the FIR, the bus driver left the place of accident after the accident happened. As per injury certificate at

Exh.22, the accident took place due to the S.T.Bus. The driver - Chaudhari Rohitkumar Kadabhai of the S.T.Bus has deposed in his examination in chief that the motorcycle was trying to overtake the Bus and at that point of time, the accident occurred. However, that fact is not deliberately proved by any evidence on record. The Bus driver in his cross-examination has deposed that there was a bump on road, however, the said fact is not mentioned in the Panchnama. Moreover, the fact that in the chief examination of the Bus driver has deposed that the motorcycle was trying to overtake the bus, whereas, in the cross examination the same person has deposed that the motorcycle was coming from Kheralu i.e. from the front side of the Bus. Therefore, no concrete evidence is put forth by the deposition of the driver of the S.T.Bus while denying negligency on his part. Considering the evidence and material available on record in support of case of the present claimant, it clearly points out the negligence on the part of the driver of Bus bearing RTO Registration No.GJ.18.Z.2001 and accordingly, this Tribunal hold the driver of Bus solely negligent in causing the accident. Hence, issue No.1 is answered **“In Affirmative”**.

9) Issue No. 2 :

9.1 Age:

As mentioned in the claim petition by the claimant, he was aged about 57 years at the time of accident. To prove his submission, the claimant has produced a copy of his

Aadhaar Card vide Exh.26, in the said document claimant's date of birth is mentioned as 01.01.1965. Herein the accident in question has occurred on 27.09.2022, therefore, it can be said that the claimant had completed **57** years, at the time of accident. Hence, the age of claimant is considered as **57 years**.

9.2 Multiplier:

The age of the claimant is taken as 57 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 **9**.

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 Injury Certificate (**Exh:22**). The Disability Certificate brought on record by the claimant vide Exh.23 discerns 32% permanent disability of his left lower limb. However, the parties have arrived at a mutual conclusion and they have agreed for consideration of disability of body as a whole to the extent of 13%. Therefore, as per the disability certificate and the mutual consent among the parties, this Tribunal thinks it fit to consider disability @ **13%** body as a whole.

9.4 Income:

According to submission of the claimant in the claim petition as well as in his affidavit at Exh:16, he was earning Rs.30,000/- per month by doing agricultural work

and animal husbandry. It is pertinent to note that, the claimant has not produced any supporting evidence to prove his monthly salary. Thus, in dearth of any documentary evidence to prove the income of the claimant, it is required to consider the minimum wages in calculating future loss of income. The present case is of the year 2022 and the minimum wages prevailing in the year of accident was Rs.9,133/- per month. Therefore, this Tribunal is of the opinion that the income of the claimant in this case is required to be considered as Rs.9,133/- per month. Thus, the monthly income of the claimant is considered to be **Rs.9,133/-**.

9.5 Future Loss of Income:

This tribunal has quantified income of the claimant as Rs.9,133/- per month. Going by the age of the claimant at the time of the accident, multiplier of 9 would be admissible. Keeping in mind the permanent disability as 13%, the compensation under this head can be worked out at **Rs.1,28,227/-** [Rs.9,133/- income X 12 months X 13% disability of body as a whole X 9 multiplier].

9.6 Actual Loss of Income:

Considering the nature of injuries sustained by the claimant in the accident and treatment taken thereof, it seems that he had not worked for 2 months as he was bed ridden due to the said accident. Considering this aspect, the actual loss of income is worked out to be Rs.9,133/- X

2 months = **Rs.18,266/-**, and the same is accordingly awarded.

9.7 Medical Expenditure :

The claimant has submitted medical bills vide Exh.24, the total of which amounts to Rs.83,505/-. It is pertinent to note that the claimant has borne medical expenses due to injuries sustained in the vehicular accident and therefore, the amount of medical expenses of the claimant is likely to be compensated and therefore, this Tribunal thinks it proper to award **Rs.83,505/-** under the head of medical expense.

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. 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.15,000/-** towards Pain, Shock and

Suffering including loss of amenities of life.

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

Amount in Rs.	Particulars
Rs.1,28,227/-	Towards Future Loss of Income
Rs.18,266/-	Towards Actual Loss of Income
Rs.83,505/-	Towards Medical Expenditure
Rs.15,000/-	Towards Attendant, Transportation Expenses
Rs.15,000/-	Towards Pain & Shock Suffering etc.
Rs.2,59,998/-	Total Compensation

11. **Interest:**

Considering the facts of the present case, the present matter is of the year 2022 and the issues were framed on 15.07.2023 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 due to sole negligence on the part of the driver of the opponent no.1's Bus No.GJ.18.Z.2001. Considering the above facts, the opponent is liable to pay compensation to

the claimant. In the present case, the driver of the Bus has given his deposition. In the decision of the Hon'ble Gujarat High Court in the case of Puriben Wd/o Bharatsinh Vs. Girishbhai Babulal, passed in First Appeal No.4243/2022 on 14.09.2023, it is held that if the driver of the offending vehicle is not made a party in the claim petition, it is not fatal to the claim. In view of the above facts and discussion made herein above, the opponent being owner of the vehicle Bus bearing Registration No.GJ.18.Z.2001 at the time of accident, opponent is held liable to pay the amount of compensation to the claimant together with proportionate cost. Accordingly, point no. 2 answered **"In Affirmative"** and for point no.3, following order is passed.

:O R D E R:

- (I) The claim petition is hereby partly allowed.
- (II) The claimant is entitled to recover the amount of **Rs.2,59,998/- (Rupees Two Lakh Fifty Nine Thousand Nine Hundred and Ninety Eight)** with proportionate cost and with interest @ 9% per annum from the date of filing of the claim petition till its realization from the opponent.
- (III) Accordingly, the opponent shall deposit the aforesaid amount of compensation together with interest as noted herein-above and proportionate costs within a month from the date of judgment & award in the below account of District Court,

Mahesana, through R.T.G.S/ N.E.F.T:

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

- (IV) 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
- (V) The opponent 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.
- (VI) On depositing the above awarded amount 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 taxed as the costs of the petition.
- (VII) Principal Amount of interim / ad-hoc compensation awarded under Section 140 of MV Act, if any, shall be deducted from finally awarded compensation.
- (VIII) It is hereby directed that 70% of awarded amount shall be deposited in F.D. in any nationalized bank as per rules for the period of five years with

following terms and conditions;

1. Before the date of maturity, the Bank shall not permit the petitioner to create any encumbrance or to raise any loan or to withdraw the deposits, fully or partly or split-up the same, without the prior permission of this Tribunal; but, shall pay periodical interest to the claimant/s - petitioner/s or his/her guardian as the case may be.
 2. After the date of maturity, the Bank shall act as per the choice of the concerned applicant/s.
 3. Bank is directed not to issue duplicate Fixed Deposit Receipts without prior permission of this Tribunal.
 4. The Bank shall intimate this Tribunal the particulars of the investment, viz. the number of the Fixed Deposit Receipts, name of the holders and the date of maturity, immediately after issuance of Fixed Deposit Receipts in this case.
- (IX) However, the claimant shall be entitled to withdraw periodical interest on the F.D.R. and remaining, 30% awarded amount be disbursed by A/c. Payee Cheque or any other online mode to the claimant/s at the time of disbursement.
- (X) Registry/MACT department shall E-Mail an authenticated copy of the award to the E-mail account of the Insurance Company/Corporation, as the case may be.

(XI) Award to be drawn accordingly.

(XII) In view of the above, the present claim petition stands disposed of accordingly.

Pronounced today in open Tribunal.

Date : 06.04.2026.

Place : Mahesana.

(**Rameshkumar Babubhai Etaliya**)

M.A.C.Tribunal (Auxi.), Mahesana

Code No.GJ00824