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DURATION :- Y. M. DS.  
06-01-23.

**BEFORE THE MOTOR ACCIDENT  
CLAIMS TRIBUNAL (AUXILIARY-III),  
MAHESANA AT VISNAGAR.**

M.A.C.P. NO. :- 4 / 2020.

EXH. NO. :- 38

**CLAIMANT :-**

**THAKOR JITUJI @ JITENDRAKUMAR DHULAJI,**  
Aged about 43 Years, Occ.:- Private Job & Driving,  
Residing at Thakorvas, village Kheralu,  
Ta.Kheralu, Dist. Mahesana.

**V/S.**

**OPPONENTS :-**

**[1] DRIVER & OWNER OF MOTORCYCLE NO.GJ-02-  
BL-5903 :-**

**LIMBACHIYA (NAI) VASANTBHAI  
PARSOTAMBHAI,**  
Aged about 50 years, Occ. :- Agriculture & Cattle  
breeding, Barber shop & B.C.A agent,  
Residing at Dabhoda,  
Ta.Kheralu, Dist. Mahesana.

**[2] INSURANCE POLICY OF MOTORCYCLE NO.GJ-  
02-BL-5903 :-**  
**ICICI LOMBARD GENERAL INSURANCE CO.  
LTD.,**

Mahesana Branch, Ahmedabad Highway,  
Mahesana,  
Ta. & Dist. Mahesana.

**CLAIM U/S.166 OF M. V. ACT FOR SUM OF RS.5,00,000/-.**

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Shri D.J.Sumara, learned advocate for the claimant...  
Shri S.I.Shah, learned advocate for the opponent No.2  
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**-:: JUDGMENT ::-**

- [1] Claimant has filed present petition u/s.166 of Motor Vehicles Act seeking compensation to the tune of Rs.5,00,000/- on account of accidental injuries sustained in vehicular accident which was occurred on 09.06.2018.
- [2] Pursuant to the notice issued by the Tribunal to the opponents, the opponent No.1 though served, has chosen not to appear before this Tribunal whereas opponent No.2 – Insurance Co. appeared through learned advocate Mr.S.I.Shah and filed reply below Exh.30 and inter alia denied negligence of driver of Motorcycle No.GJ-02-BL-5903 in vehicular accident, age and income of claimant and, therefore, challenged the entitlement of claimant for the amount claimed in the petition from him and submitted that the claim be dismissed.
- [3] The brief facts in nut shell leading to filing of the present claim petition are as under :

That on 09.06.2018 at about 04:45 evening hours, claimant was going from Bhalusana to Kheralu village on Motorcycle No.GJ-09-R-3249 of his relative and when he

reached a little head of the Varetha intersection, opponent No.1 came with Motorcycle No.GJ-02-BL-5903 from opposite direction in a way that endangered the life of human being and dashed with the Motorcycle of claimant. On account of such dashment, the claimant sustained serious injuries in nature of fracture on ankle of his left leg and other injuries on the part of his body. The claimant was brought to Kheralu Govt. Hospital and given primary treatment and, thereafter, referred to Mahesana Civil Hospital where he was admitted as an indoor patient. That operation was carried out and steel plates and screws were inserted. The FIR with regard to the accident came to be lodged before the Kheralu Police Station being I - C.R.No.37/2018.

[4] For to substantiate the averments and contentions stated in the claim petition, claimant has stepped into witness-box and filed his examination-in-chief in form of affidavit on oath at Exh.12 and has produced the following documentary evidence on record of the claim petition :

<b>Sr. No.</b>	<b>Particulars of Document</b>	<b>Exh. No.</b>
1.	FIR	14
2.	Primary injury certificate of claimant.	15
3.	Discharge card of claimant.	16
4.	Medical certificates of claimant.	17 & 18
5.	Further statement of Limbachiya Govindbhai Laljibhai before police with regard to complaint.	19
6.	Statement of Limbachiya	20

	Govindbhai Laljibhai before police with regard to complaint.	
7.	Panchnama of place of occurrence.	21
8.	Charge-sheet came to be filed against the claimant.	22
9.	Form-(c) of Right to Information Act. 2005.	23 & 24
10.	Original slip of R.P.A.D.	25 & 26
10.	Acknowledgment slip of R.P.A.D.	27 & 28

- [5] The opponents have neither examined themselves nor have produced any documentary evidence on the record of claim petition.
- [6] Heard, the learned advocate for the claimant at length. Perused the oral as well as documentary evidence.
- [7] The following issues have been framed at Exh.9 to determine present claim petition.

**:-: ISSUES :-:**

- (1) Whether it is proved that the claimant sustained injuries on account of the rashness or negligence driving on the part of the driver/s of the vehicle/s involved in the accident ?
- (2) What amount, if any, the claimant/s is/are entitled to get by way of compensation and from which of the opponent ?
- (3) What order and award ?
- [8] My findings on above issues are as under:
- (1) In the negative.

- (2) As per final order.
- (3) As per final order.

**-:: REASONS ::-**

**ISSUE NO.1 :-**

[9] It is well settled principle by catena of judicial pronouncement 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 case of **Anita Sharma v/s. The New India Assurance Co. Ltd. & Anr.-2021-0-AIR (SC) 302.**

The claimant has stepped into the witness box vide Exh.12 and has reiterated the averments and contentions narrated in the claim petition with regard to the occurrence of accident.

The claimant is duly cross-examined by learned advocate appearing for the opponent No.2 – Insurance Co. In the cross-examination at the instance of the opponent No.2, the said claimant admitted that two bikes collided head-on. He has further admitted that FIR vide Exh.14 is read out and explained to him which he accepts. He voluntarily states that he was unconscious at the time of complaint. He has further admitted that after the investigation, charge-sheet has been filed against him.

[10] So far as issue of negligence is concerned, the applicant has produced copy of complaint at Exh.14, wherein it has been stated how the accident occurred. The complainant –

Govindbhai Laljibhai Limbachiya who happens to be an eye witness to the accident has specifically stated in his further statement dtd.15.06.2018 before police that his uncle – Vasantbhai Parshotamdas Limbachiya was driving Motorcycle No.GJ-02-BL-5903 and he was sitting as a pillion rider and when they reached near Farm house on Varetha intersection, one Motorcycle No.GJ-09-R-3249 came from opposite direction in rash and negligent manner with excessive speed and dashed with his Motorcycle.

[11] Hence, looking to the above documentary evidence, admission of claimant that FIR vide Exh.14 is read out and explained to him which he accepted and two bikes collided head-on and further statement dtd.15.06.2018 of complainant- Govindbhai Laljibhai Limbachiya who is eye witness of accident, it is quite clear that claimant – Thakor Jituji @ Jitendrakumar Dhulaji while driving the Motorcycle No.GJ-09-R-5903 on the fateful day, met with an accident not because of the fault of opponent No.1 – driver / owner of the vehicle – Motorcycle No.GJ-02-BL-5903 but because of sole negligence of claimant himself as after due investigation made by police, charge-sheet came to be filed against the claimant. Therefore, the negligence can be attributable only on the claimant who was driving the vehicle – Motorcycle No.GJ—02-BL-5903 and hence, claimant is not entitled to compensation as claimant himself was negligent and/or tort-feasor for vehicular accident. Therefore, I answer issue No.1 in negative accordingly and

the point No.2 accordingly stands answered and I pass the following final order qua the point No.3.

**ORDER**

1. The claim petition is hereby dismissed.
2. Award be drawn accordingly.

Pronounced in open Tribunal, today on this 30<sup>th</sup> day of the March, 2026 at Visnagar.

**[PRAVINBHAI JOITABHAI CHAUDHARY]**  
MOTOR ACCIDENT CLAIMS TRIBUNAL (AUXI.-III),  
MAHESANA AT VISNAGAR.  
**(UIC NO.GJ00661)**