

Ahmedabad.

(motorcycle No. GJ22-D-4553)

3. Udesinh Amarsinh Vasava,
Age : adult, Occu. : driver,
Resi.: At & Po. – Shaherao,
Juni Nagri, Tal. Nanod,
Dist. Narmada.

4. Rajendrasinh Ranjitsinh Ambalia
Age : adult, Occu. : owner,
Resi.: At & Po. – Shaherao,
Navi Nagri, Tal. Nanod,
Dist. Narmada.

Subject :- Petition under Sec.166 of M. V. Act to get the
compensation of Rs.20,00,000/-

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Appearance :

Mr. Y.G. Patel/Jignesh Vaidya/S.K. Joshi, L.A. for the applicant.

Mr. A.H. Pandya, L.A. for the opponent No.1.

Mr.M.N. Gohil, L.A. for the opponent No.2-Insurer.

Opponent No. 3 : notice served.

Mr. A.D. Agrawal, L.A. for the opponent No. 4.

- : J U D G M E N T :-

1. The applicant has filed this claim petition to get the compensation of Rs.20,00,000/- together with interest and costs from the opponents, jointly and severally on account of the injuries sustained by the applicant in the vehicular accident took place on 7-12-2019 by the involved vehicle Tempo No. GJ22-U-0023 and motorcycle No. GJ22-D-4553.

2. The short facts of the present claim petition are as under : -

It is the case of the applicant that on 07-12-2019 at about 11-30 a.m., the applicant was going on motorcycle No. GJ22-D-4553 as a pillion rider and the said motorcycle drive by opponent No. 4 at proper speed and side, at that time, near village Bid, on turning, on Rajpipla-Poicha road, the opponent No. 1 came from opposite side driving Tempo No. GJ-22-U-0023 in rash and negligent manner with excessive speed endangering the human life and due to excessive speed he lost control over his vehicle and dashed with the motorcycle No. GJ22-D-4553 on which the applicant was travelling as pillion rider. As a result, the applicant thrown on the road and received serious injuries. That after the accident, the applicant was taken Rajpipla Civil Hospital. Thereafter, he was taken Mangal Hospital, Vadodara where he took treatment as an indoor patient. It is the say of the applicant that on account of the accident, the applicant has sustained permanent partial disablement and also spent amount for the medical treatment, medicines, transportation, attendants, special diet etc. Hence, in all, the applicant has claimed Rs.20,00,000/- towards compensation under the various heads.

3. The notices were duly served upon the Opponents. In response to the service of notice, the opponent No.1 has appeared through his ld advocate Mr. A.H. Pandya but did not file any written statement.
4. The opponent No. 2 has filed written statement vide **Exh. 24** in which it has stated that the application is misconceived and is not tenable at law. The age and income of the claimant mentioned in the petition is not admitted by it. The driver of vehicle No. GJ22-U-0023 was not holding valid and effective driving license at the time of accident. The applicant himself is negligent to cause accident and it has denied all the allegations leveled by the applicant in claim petition and requested to reject the claim petition.

Though the opponent No. 3 was served with notice but he has not appeared before this Tribunal or filed any written statement.

In response to the service of notice, the opponent No.4 has appeared through his ld advocate Mr. A.D. Agrawal but did not file any written statement.

5. The applicant has produced following documentary evidence : -
 1. Disability Certificate at Exh. 32,

2. Copy of caste certificate of applicant at Exh. 33,
3. Copy of Aadhar Card of petitioner at Exh. 34.
4. Copy of PAN Card & Bank pass-book of petitioner at Exh. 36.
5. Copy of application filed before DSP, Rajpipla at Exh. 37.
6. Postal-slip and acknowledgment at Exh. 38.
7. copy of letter for inquiry at Exh. 39.
8. copy of letter by Police Superintendent at Exh. 40.
9. copy of FIR at Exh. 41.
10. Copy of complaint at Exh. 42.
11. Copy of panchnama of place of incident at Exh. 43.
12. Copy of driving licence of opponent No. 1 at Exh. 44.
13. Copy of RC Book of Tempo No. GJ22-U-0023 at Exh. 45.
14. Copy of insurance policy of Tempo No. GJ22-U-0023 at Exh. 46.
15. Copy of driving licence of opponent No. 3 at Exh. 47.
16. Copy of RC Book of motorcycle No. GJ22-D-4553 at Exh. 48.
17. Copy of letter at Exh. 49.
18. Copy of charge-sheet at Exh. 51.
19. Copy of Injury Certificate at Exh. 52.
20. Copy of Discharge Summary at Exh. 53.

21. Copy of School Leaving Certificate of petitioner at Exh. 54.
 22. x-rays at Exh. 55.
 23. medical bills at Exh. 56.
6. The opponent No. 2 has produced following oral as well as documentary evidence : -
1. Deposition of opponent No. 1 i.e. Avinashbhai Kamleshbhai Rana, at **Exh. 63**.
 2. Copy of driving Licence of opponent No. 1 at Exh. 64.
 3. Copy of judgment in CC No. 547/2021 dated 20/10/2023 at Exh. 67.
7. The learned advocate for the petitioners has filed written arguments vide **Exh. 69** in which he has prayed to allow the present claim petition in the interest of justice. The ld advocate has relied upon some case-laws.
8. Ld advocate Mr. M.N. Gohil for the insurance Company has filed written arguments vide **Exh. 71**, in which it is stated that the FIR is lodged after 7 months and 2 days of the accident and no explanation is given by the applicant regarding the late FIR filed by him. The Disability Certificate is also not be taken into consideration as the doctor who has issued Certificate, has not treated the patient/applicant. The ld advocate has relied upon some case-laws.

Ld advocate for applicants has filed closing purshis vide Exh. 58 and ld advocate for opponent No. 2 has filed closing purshis vide Exh. 67/A.

9. I have carefully gone through entire documentary evidence as well as an affidavit filed by the applicant at **Exh.29**, deposition of Dr. Tushar P. Modi vide **Exh. 31** on behalf of petitioner and deposition of opponent No. 1 Avinashbhai K. Rana vide **Exh. 63** on behalf of opponent No. 2.
10. Following issues have been framed at **Exh.25** by my predecessor for the determination of this petition.
 1. Whether the applicant proves that accident took place, and vehicle in question is involved, and injury occurred due to this accident to applicant ?
 2. Whether applicant proves that accident occurred due to rash and negligent driving of opponent No. 1 driver of the vehicle invovled in the accident ?
 3. What amount of compensation is the applicant entitled to get ? And from whom ?
 4. What order ?
11. My findings on the above issues are as under :-
 1. In affirmative.
 2. In affirmative (opponent No. 1 is 80% negligent and motorcyclist is 20% negligent).

3. As per final order.
4. As per final order.

-: **REASONS** :-

12. **Issue No.1** : -

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 cases of (i) ***Bimla Devi v/s H.R.T.C., reported in AIR 2009 SC 2819*** and (ii) ***Parmeshwari Devi v/s Amir Chand, reported in 2011 (11) SCC 635.***

This Tribunal has great respect for the observation made by the Higher Forum and ratio laid down in the Judgment. This Tribunal is fully agreed with the ratio laid down in the cited authority. But, the reliance on the decision without looking into the factual background of the case before it, is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyze a decision and isolate from it

the ratio decidendi. What is the essence in a decision, is its ratio and not every observations found therein, nor what logically flows from the various observations made in the Judgment.

So far as the point of negligence is concerned, the applicant has filed an affidavit at Exh.29 and narrated the facts of accident as stated in plaint. He has been cross-examined by the LA for the opponent No.2 wherein he has it is true that the present accident complaint has been filed about seven and a half months after the accident. It is true that I have not submitted any medical certificate showing that I have taken treatment at Rajpipla Civil Hospital. It is true that no police report has been submitted regarding the accident. It is true that written evidence has not been submitted along with my application and affidavit that I have been referred from Rajpipla Civil Hospital to SSG Hospital, Vadodara. It is true that I was sitting in the back of Motorcycle No. GJ 22 D 4553. It is not true that I fell down while motorcycle was slip and I got injured. It is not true that I got injured in the accident occurred with Tempo Pick Up No. GJ 22 U-0023. I was discharged from the hospital after two days, but it is not true that I did not need any further treatment after being discharged from the hospital.

I was conscious when I was discharged from the hospital after two days. I tried to file a complaint after being discharged from the hospital, but I was told that the complaint would not be accepted because Corona period was going on at that time. It is true that at that time I did not send a written complaint through RPAD. It is not true that I did not submit any proof of my age. It is true that I have not produced any evidence regarding my income. It is not true that I did not suffered any permanent disability. It is not that there is no involvement of the defendant's vehicle in this incident as I stated, but a false case has been filed to get compensation.

On perusal of the complaint at Exh.41, it appears that it has been lodged by Dineshbhai Khodabhai Tadvi on dated 09/07/2020 before Rajpipla Police Station stating that a Chhota Hathi Tempo No. GJ22-U-0025 came in rash and negligent manner with excessive speed and dashed with motorcycle of complainant hence he fallen down from the motorcycle and sustained with grievous injuries over right leg.

Mr. Avinashbhai Kamleshbhai Rana i.e. opponent No. 1 has filed his deposition at Exh. 63 on behalf of opponent No. 2 Insurance Co. in which the opponent No. 1 has stated that on 07/12/2019 he was coming back from Vadodara driving Tempo

No. GJ22-U-0023, at that time near village Bid, a motorcyclist coming wrong side of the road, and he was dashed with driver side door of tempo hence they fallen down on the road. There was a turning point at the place of accident. The motorcyclist was in full speed, the motorcyclist was negligent to cause accident. The charge-sheet is filed against me. I was acquitted from Trial Court. I possess driving licence.

This witness is not cross-examined by otherside (applicant), despite of opportunity given to them.

In the present case, FIR is filed against opponent No. 1 by complainant and applicant was also travelling as a pillion rider on motorcycle and who is also eye-witness of alleged accident. Further, the opponent No. 1 in deposition vide Exh. 63 has admitted that he was arrested by the Police for the alleged accident, charge-sheet is filed against him, then he has stated that he was acquitted from the charge leveled against him, to prove the same he has produced copy of judgement on record. Considering all the documentary evidence on record, more particularly the complaint, charge-sheet (Exh. 50), affidavit of applicant (Exh. 29), deposition of opponent No. 1 (Exh. 63), thus, considering the above referred documents on record, though I have no hesitation in holding that the said vehicles

were collided but considering the fact that the opponent No.1 being driver of big vehicle i.e. Tempo No. GJ22-U-0023 had to drive his such vehicle following the traffic rules but he failed to do so and the charge-sheet is also filed against him and hence, the opponent No.1 - driver of the such Tempo No. GJ22-U-0023 vehicle is held negligent to the extent of 80% and the motorcyclist who had to follow the traffic rules and thereby, had to control his motorcycle to avoid so called accident but he also failed to do so and hence, he is also held negligent to the remaining extent of 20% for his negligence in driving said motorcycle No. GJ22-D-4553 and thereby, the accident was occurred. Hence, I decide issue No.1 in affirmative.

13. **Issue No.2** :-

So far as the quantum is concerned, the applicant has deposed at Exh.29 that he was 36 years old at the time of accident and earning Rs. 10,000/- per month by working as a Mason and also labour work. In cross-examination Exh. 29, the applicant has admitted that he has not produced any evidence to prove his income. Thus, the applicant has failed to submit any cogent documentary evidence regarding the income as stated by the applicant. Under these circumstances, the Tribunal is empowered to presume the monthly income of the

applicant. 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 the prevailing minimum wages. In the case of **Govind Yadav v/s N.I.I.Com.**, reported in **2012 ACJ 28 (SC)**, para No.17 it has been held that when there is no proof of income, income of the deceased or injured claimant shall be decided by taking into consideration prevailing minimum wages. Since, accident occurred in the month of February-2020, minimum wages for such year is required to be taken into consideration. None of the parties have produced notification with respect to minimum wages prevailing in the said year. I could lay my hand on the notification showing minimum wages prevailing in the year 2020. As per the said notification all the rates are given on daily basis and to arrive at monthly rate. Admittedly, the rates applicable from 01.10.19 to 31.03.20, provided under category of unskilled of the above referred notification is required to be taken into consideration, which is about Rs.8,070/- per month. Therefore, monthly income of the applicant is assessed as Rs.8,070.00. It appears from the disability certificate of applicant produced at Exh. 32 that the applicant has sustained 70% permanent partial impairment.

In this regard, Dr. Trushar Modi has been examined on behalf of petitioner vide Exh. 31 in which he has stated that I have been doing private practice in Vadodara for the last thirty years. I examined Dineshbhai Khodabhai Tadvani on 03/09/22 for permanent deformity. According to him, he was suffered from fracture, for this, he was treated at the Mangalam Hospital in Vadodara, where he was also given treatment. He was treated using the Elizaro method. When I treated him, he was in trouble in his right leg. He could not run. He could not bend his knees. He could not sit upright, he could not do any heavy work. He was limping while walking and could not walk without the support of a stick. Everyone examined him. The bones had spread and the fractures had united, but the leg had become about an inch short. The movement of his knee was very limited with pain and the legs had also fallen. The movement of his leg was also limited, but he was walking with the help of a stick. On examining his problems, the truth came out, there were 2 other fractures had joined together. Taking all this into account, I have assessed him as having 70% permanent deformity of his right leg on the basis of Kesler. For which I have given a certificate which is produced at Exh. 32. The doctor has further stated that this person cannot do

carpentry work due to this type of injury. This witness is cross-examined by learned Mr. M.N.Gohil wherein this witness has admitted it is true that the patient came to me for examination after two years of discharge due to the treatment of the disease that was presented to me. It is true that Mangalam Hospital is located in Vadodara. It is true that all the documents of the treatment received by me are from Mangalam Hospital, Vadodara. It is true that I did not treat this patient. It is true that if I do not have any other treatment certificates and this patient has suffered any injury again during these two years, then it cannot be said for sure that the injury was caused by this accident. It is not true that if the leg is amputated above the knee, then 65% deformity is considered. The doctor willingly states that in such a case, it can be considered from 75 to 100 percent and if both legs are amputated above the knee, it can be considered 100 percent deformity. It is true that the patient has a fracture above the knee and it is only in the right leg. It is true that there may be a variation of 10 to 15 percent in the calculation of the deformity of each doctor. It is true that the deformity shown in my report is partial. It is not true that I give false statements to help the patient.

To consider it body as whole, it would be necessary to consider 50% of total disability, hence 35% disability body as a whole is considered by this Tribunal. Therefore, the amount would come to Rs.2824.50/- [35% of Rs.8070/-] and hence, yearly loss of income of the applicant would come to Rs.33,894/- [2824.50 x 12].

14. The Id advocate for applicant has relied upon some case-laws which are as under :
- 2022 ACJ 2161 in the case between Velayudhan v/s National Insurance Co. ltd.
 - 2018 ACJ 1710 in the case between Ramsinh Harisinh Rajput v/s Paba eva Rabari
 - 2011 ACJ 1613 in the case between Parmeshwari v/s Amir Chand and others
 - 2012 ACJ 759 in the case between Union of India an another v/s Yakub
 - 2024 ACJ 655 in the case between Oriental Insurance Co. ltd. v/s Anil and others.
 - 2024 ACJ 1278 in the case between State of Maddhya Pradesh v/s Jaipal Das and another

The facts and circumstances of the present case is different from the case-laws produced by the Id advocate for the applicant, therefore they are not applicable to the present case on hand.

Now, the applicant has mentioned his age 36 years at the time of accident. To prove the same, he has produced his Aadhar Card vide Exh. 34 in which his DOB is mentioned 01/06/1983 and the accident took place on 07/12/2019, hence, it can be said that the applicant was aged about 36 years at the time of accident, hence, considering the same, the applicant is entitled to get multiplier of '15' years as held by the Hon'ble Apex Court in ***Sarla Verma & Ors. v/s. Delhi Transport Corporation & Anr.*** reported in ***2009 A.C.J. 1298***. Hence, the amount can be calculated to Rs.5,08,410/- [33,894/- x 15]. Therefore, the applicant is entitled to get amount of Rs.5,08,410/- towards the future loss of income. It appears from the medical bills Exh. 56 that the applicant had sustained grievous injuries with fracture, therefore, it can be believed that he had to suffer a lot while recovery. Hence, considering the nature of injuries, the applicant is awarded **Rs.35,000/- towards pain, shock and suffering**. The applicant has produced medical expense documents at Exh. 56 for total Rs.2,72,548/- and thus, considering the same, the applicant had to incur such amount for medicines & medical treatment, therefore, the applicant is awarded an amount for **Rs.2,72,500/- (round figure) towards medicines and**

medical treatment etc. So far as the actual loss of income is concerned, considering the nature of injuries mentioned in the Disability Certificate vide Exh.32, it can be believed that the applicant must have not carried out his work atleast for four months. Hence, the applicant is awarded **Rs.32,280/- [8,070 p.m. x 4 months] towards actual loss of income**. So far as the amount of transportation, special diets, attendants etc. is concerned, this Tribunal is of the opinion that the applicant would have incurred expenses towards transportation from the place of accident to hospitals and for the follow-up treatment. Moreover, it can be believed that during the treatment and recovery period, the applicant would have been attended by two relatives, as well as, the petitioner would have required special and nourishing diets for speedy recovery of injuries, therefore, considering the nature of injuries and treatment period that emerged from the various medical papers, this Tribunal is of the view that the applicant is entitled for **Rs.20,000/- towards transportation, special diets and attendants' charges**. So, in all, the applicant is entitled for total compensation of Rs.8,68,190/- under the various heads.

15. Ld advocate Mr. M.N. Gohil for the insurance Company has argued that FIR is lodged after 7 months and 2 days of the

accident and no explanation is given by the applicant regarding the late FIR filed by him, therefore false FIR is filed.

In this regard, it is required to note that if FIR is false, so no investigation is made by the Insurance Company or no investigation report is produced by the Insurance Company before this Tribunal regarding false FIR. Further, the Insurance Company has not made any police complaint regarding false FIR lodged in this case and also, Insurance Company has not given any explanation that as to why, it has not filed any police complaint regarding false FIR.

On the contrary, the applicant has made efforts to file FIR, therefore he has write an application to DSP Office, Rajpipla to lodge a complaint which is produced at Exh. 37, Postal Slip and acknowledgment slip at Exh. 38 and letter of Police Superintendent to P.I., Rajpipla to do the needful at Exh. 39 and letter to applicant vide Exh. 40.

Therefore, the arguments advanced by Insurance Company regarding false FIR is not acceptable in the eye of law.

16. The Id advocate for the Insurance Company has relied upon some case-laws which are as under :
 - 2010 (4) TAC 317 (AP) in the case between Arkala Prakash v/s Balakishan Rao and others.

- 2016 (1) TAC 12 (Guj.) in the case between Bhikhabhai Kalabhai Solanki (Bhangi) thru. Heirs and otehars v/s Prahladbhai Kacharabhai Patel and another.
- Civil Appeal No. 8981 of 2010 decided by Hon'ble Supreme Court on dated 18/10/2010 in the case between Raj Kumar v/s Ajay Kumar & Another.

The facts and circumstances of the present case is different from the case-laws produced by the ld advocate for the Insurance Company, therefore they are not applicable to the present case on hand.

17. It is further argued by ld advocate for Insurance Company that the opponent No. 1 was acquitted before Trial Court vide CC No. 547/2021 passed by ld Addl. Civil Judge, Rajpipla on dated 20/10/2023. Therefore, in the present petition also, the Insurance Company be exonerate as opponent No. 1 is not negligent held by ld Trial Court in its judgment on dated 20/10/2023.

As per Section 40 of Indian Evidence Act, judgment of criminal case is not binding to the civil matter whereas civil judgment is binding to the criminal matter. Therefore, the judgment of acquittal of opponent No. 1 before Trial Court, is not binding to this Motor Accident Claim Tribunal.

18. As discussed above and for the reasons stated in the foregoing paras of this judgment, this Tribunal has held that the accident occurred due to 80% negligent driving on the part of the opponent No.1 - driver of said offending Tempo No. GJ22-U-0023. So far as the liability to pay the compensation to the applicant is concerned, it is appears from driving license produced at Exh.44 that opponent No.1 possessed valid license on the date of accident and opponent No. 1 Avinashbhai K. Rana is owner of such vehicle as per copy of R. C. Book Exh.45. Further, it is appears from copy of Insurance Company Exh.46 that offending vehicle was insured with the opponent-insurer and the policy covers on the date of accident.
19. As this Tribunal has decided earlier that the opponent No. 1 is 80% negligent and opponent No. 3 is 20% negligent. The opponent No. 3 is driver of motorcycle No. GJ22-D-4553 (Driving Licence Exh. 47) and opponent No. 4 is owner of the motorcycle No. GJ22-D-4553 (RC Book Exh. 48), therefore they are also liable to pay amount of compensation to the applicant and therefore, all the opponents are jointly and severally liable to pay the amount of compensation to the applicant. Hence, I decide the issue No. 1 and 2 accordingly.

20. In the case of ***New India Assurance Company V/s. Rajkumar Dharamsing in First Appeal No.73 of 2014, dated 18.02.2014***, the Hon'ble High Court has granted 9% interest, and considering fact & circumstances of this case, I award simple interest at the rate of 9% per annum from the date of the application till realization. Therefore, the claim petition deserves to be partly allowed and as such I pass the following final order.

-: ORDER :-

1. Present claim petition is hereby partly allowed.
2. The applicant is entitled to get **Rs.8,68,190/- [Rupees Eight Lacs Sixty Eight Thousand One Hundred and Ninety Only]** towards the compensation from all the opponents jointly and severally with proportionate costs and 9% p.a. interest from the date of filing of the claim petition till realization. The opponents are directed to deposit the said amount of compensation before this Tribunal **within one month** from the date of this order.
3. The amount of interim compensation, if any, paid to the applicant shall be adjusted with the amount of compensation. The amount of court fees shall be calculated by the office and shall be deducted first out of

the amount of compensation deposited with this Tribunal.

4. Out of the remaining amount, 30% amount be paid to the applicant in cash by A/c. Payee Cheque after due verification and remaining 70% amount be invested in any Nationalized Bank as per the choice of the applicant in his name in Fixed Deposit Receipt for period of **FIVE YEARS**. The applicant shall be entitled to receive the periodical interest thereon.
5. It is further ordered that the applicant will not be entitled to withdraw the said F.D.R. before its maturity date or to have loan thereon without prior permission of this Tribunal. Further, the concerned Bank will be under obligation to release the said F.D.R. on the date of its maturity without requiring release order from the Tribunal.
6. The opponents to bear their own costs.
7. Award to be drawn accordingly.

Signed and pronounced in the open court today on this 16th day of April, 2026.

Date : 16-04-2026.

(Atulkumar Vinodbhai Hirpara)
M. A. C. T. (Auxi.) &

Place : Rajpipla

Additional District Judge,
Narmada, At - Rajpipla
GJ00656