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Registered on :- 15-06-2021.

Decided on :- 18-04-2026.

Duration :-                 
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**Before the Motor Accident Claims Tribunal (Auxi.),  
Narmada, At - Rajpipla**

**M. A. C. P. No.42/2021**

Exh.61.

Applicant :

Ishwarbhai Maktabhai Vasava  
age about : 31 years,  
Occu.: agricultural labour, at present nothing,  
R/o : At & Post – Zarvani, Tal. Garudeshwar,  
Dist. Narmada.

V/s.

Opponents :

Driver, Owner and Insurer of Auto Rickshaw No.GJ 06 YY 9555:-

1. Arifkha Usmankha Rathod, driver,  
R/o : Rathod Faliyu,  
At & Post – Vora, Tal. Tilakwada,  
Dist. Narmada.
2. Vinodbhai Ramabhai Parmar, Owner  
R/o : Block No. 1, R. NO. 6, BSUP Avas,  
Behind Hariyali Hotel,  
Waghodiya Road, Vadodara.
3. ICICI Lombard General Insurance Co. Ltd., insurer,  
Office at – Shri Rang Ashish, Ground Floor,  
In front of Radha Krishna Temple,  
Brahman Faliya, Kachhiyawad,

Station Road, Rajpipla

Driver cum Owner of motorcycle No.GJ 34 E 1068 :-

4. Sarojben Jashubhai Bhil  
(Heir of deceased Jashubhai Haribhai Bhil)  
driver cum owner,  
R/o : Nadi Valu Faliyu,  
At & Post – Bharwada, Tal. Naswadi,  
Dist. Chhotaudepur.

Subject :- Petition under Sec.166 of M. V. Act to get the compensation  
of Rs.15,00,000/-  
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Appearance :

Mr. H.M. Shah, L.A. for the applicant.

Opponents No.1 : In person

Opponent No. 2 – Served with registered AD.

Mr. A.H. Pandya, L.A. for the opponent No.3.

Mr. S.K. Joshi/K.M. Patel, L.A. for the opponent No.4.

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

1. The applicant has filed the present claim petition to get amount of compensation for Rs.15,00,000/- together with costs and interest from the opponents, jointly and severally on account of the injuries sustain by him in the vehicular accident happened on 22-5-2021 by the involved vehicle Auto Rickshaw No.GJ 06 YY 9555 and motorcycle No. GJ34-E-1068.
2. The short facts of the claim petition can be narrated as under : -

It is the case of the applicant that on fateful day i.e. on 22-5-2021, the applicant was travelling as a passenger in Auto Rickshaw No.GJ 06 YY 9555 from village Shahpura to Devalia via village Namariya, at the relevant time, near village Kukrej, Near Dargah Tal. Tilakwada, the opponent No.1 was driving his rickshaw in rash and negligent manner with excessive speed due to which, he dashed his vehicle with the said motorcycle coming from opposite side, which resulted into accident and the applicant sustained injuries on left shoulder, left leg, hips, right leg and other grievous injuries and immediately thereafter, he was taken to the Tilakwada referral hospital, thereafter, referred and shifted to SSG Hospital at Vadodara for expert medical treatment 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, purchasing medicines, transportation, attendants, special diet etc. Hence, in all, the applicant has claimed Rs.15,00,000/- towards compensation under the various heads.

3. Notices were duly served upon the Opponents. However, the opponent No.1 has appeared in person vide adjournment

application Exh. 13, thereafter he did not file any written objection.

The opponent No. 2 was served with registered AD, track consignment report is produced on record.

The opponent no. 3 filed written statement vide Exh. 20 in which it has stated that all the averments, statements and contentions contained in the petition are not true and not admitted by the opponent. The driver of the vehicle was not holding valid an effective driving licence at the time of accident. It is denied that the opponent No. 1 was driving the vehicle No. GJ06-YY-9555 in rash and negligent manner, whereas the accident took place due to negligent driving of rider of motorcycle No. GJ34-E-1068. The age, income and injuries sustained by the applicant is denied by it and it has denied all the allegations leveled in the claim petition and requested to reject the petition against it.

The opponent No. 4 has appeared before this Tribunal through his ld advocate Mr. S.K. Joshi but did not file any written statement.

4. The applicants have produced following documentary evidence : -
  1. Certified copy of FIR at Exh.26.
  2. Certified copy of Spot panchnama at Exh.27.

3. Copy of Discharge Card from SSG Hospital, Vadodara at Exh. 28.
4. Disability Certificate at Exh. 29.
5. Copy of RC Book of rickshaw No. GJ06-YY-9555 at Exh.30.
6. Copy of Insurance policy of rickshaw No. GJ06-YY-9555 at Exh.31.
7. Copy of R. C. Book of motorcycle No. GJ34-E-1068 at Exh.32.
8. Copy of Aadhar Card & PAN Card of petitioner at Exh.33 and 34.
9. Copy of Bank pass-book of petitioner at Exh. 35.
10. List of medical bills at Exh.36.
11. Original Discharge-Card at Exh. 39.

Ld advocate for opponent No. 3 has filed abated summary vide Exh. 56.

5. LAs for the applicant has filed closing pursis at Exh.44 and ld advocate for opponent No. 3 has filed closing purshis at Exh.51 and thereafter at Exh. 57. I have gone through all the documentary evidence as well as deposition filed by the applicant vide Exh.22 deposition of Dr. Tushar Modi at Exh. 43. Heard LAs for the respective parties. Read the case authority

submitted by LA for the Opp. No.3-insurer in support of the written arguments vide Exh. 60.

6. In view of above pleadings, following issues have arisen at Exh.21 by my predecessor.

1. Whether the applicant proves that he sustained with injuries in a vehicular accident due to rash and negligent driving of the driver of the vehicle involved in the accident ?

2. Whether the applicant is entitled to get compensation ? If yes, what amount ?

3. What award and against whom ?

7. My findings on the above stated issues are as under :-

1. In affirmative, both the drivers are equally negligent to cause accident.

2. As per final order.

3. As per final order.

-: **REASONS** :-

8. **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. 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 observation found therein, nor what logically flows from the various observations made in the Judgment.

So far as the point of contributory negligence is concerned, the applicant has filed his deposition at Exh.22 reiterating the facts of accident as alleged in the main claim petition Exh.1. He has been cross-examined by LA for the opponent No.3 wherein he has admitted that there were three passengers in the rickshaw at the time of accident. A bike in front of rickshaw thus accident took place. Motorcyclist was driving in speed, hence

accident took place due to his negligence. It is true that I took treatment in government hospital. It is not true that I have not received any permanent disability due to injuries sustained in alleged accident and I can do the work as earlier.

This witness is also cross-examined by Id advocate for opponent No. 4 Mr. S.K. Joshi in which he has admitted that there was a one lane road. It is true that he has not taken treatment in any other hospital except SSG Hospital, Vadodara. It is true that I am doing agricultural work.

On perusal of the FIR, spot panchnama produced at Exh.26 and Exh.27 respectively, it clearly reveals that the FIR for the so called accident happened on 22-5-2021 has been lodged on 22-5-2021 by Arifkhan Usmankhan Rathod i.e. opponent No. 1 before Tilakwada police station stating that he was driving rickshaw No. GJ06-YY-9555, at that time driver of motorcycle No. GJ34-E-1068 came from opposite three seated, in rash and negligent manner and dashed with rickshaw of complainant, which resulted into accident in which motorcyclist Jashubhai Haribhai Bhil died during treatment in SSG Hospital, Vadodara and others sustained grievous injuries. Moreover, it reveals from the Exh. 56 that abated summary is filed against motorcyclist Jashubhai Haribhai Bhil. Thus, considering the above referred

documents on record, this Tribunal is of the view that both the driver i.e. the Opp. No.1 and the motorcyclist are equally negligent for causing so called accident. Hence, I reply issue No.1 accordingly.

9. **Issue No.2 :-**

So far as the quantum is concerned, the applicant has deposed at Exh.22 that he was doing agricultural labour work from which he was earning Rs.10,000/- p.m. but, the applicant has failed to prove this income by filing any cogent documentary evidence as admitted. Under these circumstances, the Tribunal is empowered to presume the 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 May of 2021, minimum wages for that month is required to be taken into consideration. None of the parties have produced relevant notification with respect to minimum wages. I could lay my hand on the notification

showing minimum wages prevailing in the year 2021. As per the said notification all the rates are given on daily basis and to arrive at monthly rate, the daily rate is to be multiply with 26 working days. Admittedly, considering the fact that the applicant was engaged in the said occupation but no any cogent documentary evidence to that extent is produced on record, the rates applicable from 01.04.21 to 30.09.21, provided under category of unskilled of the above referred notification is required to be taken into consideration, which is about Rs.8845/- and as per notification net pay including D.A., Rs.8845/- is mentioned. Therefore, the established income of the applicant is considered as Rs.8845/- p.m. It appears from the disability certificate produced at Exh.29 shows that the applicant has sustained 47% permanent partial disablement. In this regard, Dr. Tusharbai P. Modi has deposed vide Exh. 43 on behalf of petitioner in which he has stated that on 10-12-2022, I examined Ishwarbai Maktabhai Vasava for permanent deformity. According to him, on 22-05-2021, due to a vehicle accident, he suffered a fracture of the humerus in his left hand and his nerve was injured and due to this, his hand became paralyzed. His right leg was dislocated. There were fractures and wounds in the big toe and second finger of his right foot. He had a fracture in the knee of

his left leg and due to increased pressure in the leg, all the nerves were compressed. For all this, he was treated at SSG Hospital and underwent operations and plastic surgery. I have seen his treatment papers. When I examined him, he had pain in his right leg, left arm and left foot. He could not do any heavy work, could not run, had difficulty lifting weights, bending his knees, and sitting upright. The grip strength of his left hand had decreased. When I examined him, the fracture of his left hand had healed, but the movement of shoulder and elbow was limited with pain. The paralysis of his hand had recovered but the grip strength had decreased. The fractures in his left leg had united, all the wounds had healed but the movement of the knee was limited and the ligaments had become loose. The fractures of the thumb and second finger in his right leg had united and all the wounds had healed but the movement of both his fingers was limited. All the fractures had united after taking his X-ray and taking all this into consideration, I have assessed him as having a permanent disability of 12% in the right leg, 22% in the left leg and 24% in the right hand based on Kessler and Manual. According to Kessler's formula, the disability of the whole body is estimated to be 47%. I have given a certificate for this. I have given my score. In my opinion, the applicant can do his daily

activities but he has difficulty in doing so and according to me, he cannot do heavy work or labour work and in my opinion the applicant has difficulty in driving a vehicle.

This witness is cross-examined by Id advocate for opponent No. 3 by Mr. A.H. Pandya in which the witness has admitted it is true that I did not provide treatment to the patient. It is true that while issuing this certificate, I took into consideration the papers given to the patient by SSG Hospital. It is true that during the one and a half year period when the patient came to me after being discharged from SSG, no papers were presented to me indicating that the patient had received any treatment. It is true that all the fractures of the patient had united. It is not true that if the patient had done exercises with a physiotherapist, the permanent deformity could have been reduced and he could have also done his daily activities well. It is not true that I did not take into consideration the gadget published online by the Government of India to assess permanent deformity. **It is true that when different doctors examine the patient, there may be a difference of 2 to 5 percent in the permanent deformity.** It is not true that I have given a more permanent disability certificate to help the applicant get a higher amount of

compensation. It is not true that I am giving false testimony on oath.

This witness is also examined by Id advocate for opponent No. 4 Mr. S.K. Joshi in which the witness has stated it is true that the patient had suffered an accidental injury and recovered. It is true that in cases of fracture, recovery is usually faster by getting exercises done by a physiotherapist. It is not true that when I examined the patient, he was not examined by a physiotherapist to see if he had done exercises. When I asked the patient, he learned the exercises from the physiotherapist and did them himself for two to three months after being discharged from the hospital. It is true that some recovery can be achieved by doing exercises in the ligaments as well. It is true that according to me, labour work means heavy work. I do not know what kind of labour work an agricultural labourer has to do. I have some knowledge about agricultural labour, now I say that the applicant can do agricultural labour work with difficulty. It is not true that the applicant does not have difficulty walking due to the injuries to his feet and toes. It is not true that I have intentionally overestimated the total body deformity. I had tested the patient to see that he had difficulty sitting upright and

bending his knees. It is not true that I am giving false testimony under oath.

Here in present case, this witness had admitted it is true that when different doctors examine the patient, there may be a difference of 2 to 5 percent in the permanent deformity. Disability Certificate is produced at Exh. 29 in which 47% disability is mentioned and in the deposition of doctor witness, he has stated to consider 47% disability body as a whole but on the other hand he has also stated that it is true that when different doctors examine the patient, there may be a difference of 2 to 5 percent in the permanent deformity.

Therefore, this Tribunal is of the view to consider 40% disability body as a whole of the petitioner. Therefore, the amount would come to Rs.3538/- [40% of Rs.8845/-] and hence, yearly loss of income of the applicant would come to Rs.42,456/- [Rs.3538/- x 12]. Now, so far as the multiplier is concerned, the applicant was aged about 31 years at the time of accident as per claim petition and to prove the same he has submitted his Aadhar Card at Exh. 33 in which his DOB is mentioned 21/08/1989 and the accident took place on 22/05/2021, hence considering the same, it can be said that the applicant was finally aged about 31 years at the time of accident, and thus, the

applicant is entitled to get multiplier of '16' years for the age band 31-35 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.6,79,296/- [Rs.42,456/- x 16]. Therefore, the applicant is entitled to get amount of Rs.6,79,296/- towards the future loss of income. It also reveals that the applicant has permanent partial disability at 40%. Hence, considering such permanent partial disability, the applicant is awarded Rs.40,000/- towards pain, shock and suffering. The applicant has produced medical bills of Rs. 8,077/- vide a list at Exh. 36 therefore, the applicant is awarded an amount for Rs.8,100/- (round figure) towards medicines and medical treatment etc. So far as the actual loss of income is concerned, considering the nature of grievous injuries with multiple fractures, he must have not carried out his work at least for 6 months. Hence, the applicant is awarded Rs.53,070/- [Rs.8845/- p.m. x 6 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 period, the applicant would have been attended by two relatives, as well as, the applicant 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 said medical certificate, 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 to get net **Rs.8,00,466/-** towards the compensation under the various heads.

10. **Liability:-** So far as the liability to pay the compensation to the applicant is concerned, it is clear from the record that the opponent No.1 was being driven the said Rickshaw No.GJ 06 YY 9555 as per copy of FIR produced at Exh.26. Further, it appears from the R. C. Book of said offending vehicle produced vide Exh.30 that the opponent No.2 was its registered owner on the date of accident having his name and registration number of said offending vehicle. Said offending vehicle was insured with the Opp. No.3 for the effective period from 11-03-2021 to 10-03-2022 as the date of so called accident is 22-05-2021 as per its Policy produced at Exh.31 and thus, the said insurance package policy covers the date of so called accident and the risk of the

applicant being third party for the Opp. No.3. The opponent No. 4 is legal heir of motorcyclist, RC Book of motorcycle is produced at Exh. 32, Abated summary is filed against driver cum owner of motorcycle i.e. deceased Jashubhai which is produced at Exh. 56. Therefore, all the opponents are jointly and severally liable to pay amount of compensation to the applicant. Hence, I decide issue No.2 accordingly.

11. **Interest:-** 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.8,00,466/- [Rupees Eight Lakhs Four Hundred and Sixty Six Only]** from all the opponents jointly and severally, towards the compensation 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% be invested in any Nationalized Bank as per the choice of the applicant in his name in separate Fixed Deposit Receipt for the 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 shall bear their own costs.

7. Award to be drawn accordingly.

Signed and pronounced in the open court today on this 18<sup>th</sup> day  
of April, 2026.

Date : 18-04-2026.

Place : Rajpipla

(Atulkumar Vinodbhai Hirpara)

M. A. C. T. (Auxi.) &  
Additional District Judge,  
Narmada, At – Rajpipla  
GJ00656