Received on :- 18-06-2024.

Registered on :- 18-06-2024.

Decided on :- 16-04-2026.

Duration :- ___ ___ ___
Y M D

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

M. A. C. P. No.29/2024

Exh.-56.

Applicant :
Tadvi Pruthaviraj Bharatbhai
Age : 25 years, Occu.: nothing,
Resi.: Dedka Faliya,
At – Zarvani, Tal. Nandod,
Dist. Narmada.

V/s.

Opponents :
(Pick-up Tempo No. GJ31-T-2363)

1. Arvindbhai Parsingbhai Vasava,
   Age : adult, Occu. : driver cum owner,
   R/o : Khokhra Umar Faliyu,
   Post – Vandri, Dumkhal, Narmada.

2. ICICI Lombard General Insurance Co. Ltd.,
   Occu. : insurer,
   Office at – 318, R.K. Plaza, 3rd floor,
   Sainath Road, Diwalipura, Vadodara.

Subject :- Petition under Sec.166 of M. V. Act to get the compensation of Rs.5,00,000/-

Appearance :

Mr. U.K. Prajapati, L.A. for the applicant.
Mr. Pratik A. Patel, L.A. for the opponent No.1.
Mr. Kamlesh Patel, L.A. for the opponent No.2 -Insurer.

-: JUDGMENT :-

1. The applicant has filed this claim petition to get the compensation of Rs.5,00,000/- 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 25-02-2024 by the involved vehicle Pick-up Tempo No. GJ31-T-2363.

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

It is the case of the applicant that on 25-02-2024 at about 10-45 hrs., the applicant was proceeded on his motorcycle No.GJ 22 M 1716 and passing through the Holi Faliyu, near Naginbhai Chunilal's field, at vilalge Zarvani, Tal. Garudeshwar, a Pick-up Tempo No. GJ31-T-2363 driven by opponent No. 1 in rash and negligent manner with excessive speed endangering the human life, lost control over the steering and dashed with the applicant from front side. Thus, the accident was occurred and the applicant sustained fracture and other grievous injuries. The complaint was lodged before Kevadia Traffic Police Station on 27/04/2024. That after the accident, the applicant was taken

Kevadia Hospital and for further treatment he was taken Hospital of Dr. Naishadh Parmar where he took treatment as an indoor patient till 02/03/2024, where operation was performed. 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.5,00,000/- towards compensation under the various heads.

3. The notices were duly served upon the Opponents. The opponent No.1 has appeared through his ld advocate but did not file any written statement.

4. The opponent No. 2 has filed written statement vide Exh. 18 in which it has stated that the application is not correct, bonafide and tenable at law. The age, income and treatment taken by the applicant is denied by it. 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.

5. The applicant has produced following documentary evidence : -

1. certified copy of FIR at Exh. 25.
2. certified copy of panchnama of scene of accident at Exh. 26.
3. Yadi to Police at Exh. 27.
4. Discharge record at Exh. 28.
5. Copy of injury Certificate at Exh. 29.
6. Treatment summary at Exh. 30.
7. Disability Certificate at Exh. 31.
8. Copy of Aadhar Card of petitioner at Exh. 32.
9. Copy of PAN Card & Bank Pass-book at Exh. 33 & 34.
10. Copy of RC Book of Pick-up Tempo No. GJ31-T-2363 at Exh. 35.
11. Copy of insurance policy of Pick-up Tempo No. GJ31-T-2363 at Exh. 36.
12. copy of fitness certificate of Pick-up Tempo No. GJ31-T-2363 at Exh. 37.
13. Copy of charge-sheet at Exh. 38.
14. medical bill at Exh. 39.
15. test report at Exh. 40.

6. The opponent No. 2 has produced following documents :

1. Vehicle Particular for Pick-up Tempo No. GJ31-T-2363 Exh. 46.
2. Certificate from RTO, Narmada for not having permit with Pick-up Tempo No. GJ31-T-2363 Exh. 47.
3. Certified copy of terms and conditions of Pick-up Tempo No. GJ31-T-2363 at Exh. 51.
4. Copy of driving licence of opponent No. 1 at Exh. 52.
5. Copy of DL extract at Exh. 53.

7. I have carefully gone through entire documentary evidence as well as an affidavit filed by the applicant at Exh.22. Learned adovate for the applicant has filed closing purshis vide Exh. 42 on 17/06/2025. The ld advocate for Insurance Company has filed closing purshis vide Exh. 54 on dated 19/08/2025.

8. Following issues have been framed at Exh.14 by this Tribunal for the determination of this petition.

    1. Whether the applicant proves that he sustained 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 ?

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

1. In affirmative.
2. As per final order.
3. As per final order.

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

10. **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.22 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 admitted that he was driving motorcycle at the time of accident. It is true that there was head-to-head collusion between both the vehicles. It is true that I have not produced any evidence to show my income. On perusal of the complaint at Exh.25, it appears that it has been lodged by Vimalbhai Sureshbhai Tadvi i.e. brother-in-law of applicant before Kevadia Traffic Police Station stating that a Pick-up vehicle No. GJ31-T-2363 came from opposite side in rash and negligent manner with excessive speed and dashed with motorcycle of injured hence injured sustained fracture injuries. The date, time, place of incident, name of victim injured as well as registration number of vehicle involved are mentioned

in the F.I.R. and charge-sheet is produced vide Exh. 38 which is filed against opponent No. 1. While on the other hand, opponent No.1 has not stepped into witness-box to depose on oath to produce any rebuttal evidence to resist claim petition as far as his negligence is concerned. Hence, adverse inference is required to be drawn against the opponent No.1. Hence, Considering all the documentary evidence on record, more particularly the complaint, spot panchnama, charge-sheet (Exh. 38), this Tribunal has no hesitation in holding that, the opponent No.1 was driving the Pick-up vehicle No. GJ31-T-2363 rashly and negligently and thereby the accident was occurred. Thus, the opponent No.1 is held solely negligent for causing such vehicular accident. Hence, I decide issue No.1 in affirmative.

11. **Issue No.2** :-

So far as the quantum is concerned, the applicant has deposed at Exh.22 that he was 25 years old at the time of accident and earning Rs. 15,000/- per month by working as a Cook in Shivshakti Hotel, Rajpipla. To prove the same the applicant has not produced any evidence. Further, in cross-examination Exh. 22 he 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-2024, 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 2024. As per the said notification all the rates are given on daily basis and to arrive at monthly rate. Admittedly, the rates applicable from 01.10.23 to 31.03.24, provided under category of unskilled of the above referred notification is required to be taken into consideration, which is about Rs.12,012/- per month. Therefore, monthly income of the applicant is assessed as Rs.12,012.00. It appears

from the disability certificate of applicant produced at Exh.31 that the applicant has sustained 21% permanent partial impairment of right lower limb. To consider it body as whole, it would be necessary to consider 50% of total disability, hence 11% disability body as a whole is considered by this Tribunal. Therefore, the amount would come to Rs.1,321.32 [11% of Rs.12012/-] and hence, yearly loss of income of the applicant would come to Rs.15,855.84 [1,321.32 x 12].

Now, the applicant has mentioned his age 25 years at the time of accident. To prove the age of the applicant, he has produced Aadhar Card of applicant vide Exh. 32 in which his DOB is mentioned 18/09/1999 and the accident took place on 25/02/2024, hence, it can be said that the applicant was aged about 25 years at the time of accident, hence, considering the same, the applicant is entitled to get multiplier of '18' 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.2,85,405/- [15,855.84 x 18]. Therefore, the applicant is entitled to get amount of Rs.2,85,405/- towards the future loss of income. It appears from the medical bills Exh. 39 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.15,000/- towards pain, shock and suffering.** The applicant has produced medical expense documents from Exh. 39 for total Rs.70,305/- 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.70,305/- 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.31, it can be believed that the applicant must have not carried out his work atleast for two months. Hence, the applicant is awarded **Rs.24,024/- [12,012/- p.m. x 2 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.15,000/- towards transportation, special diets and attendants' charges**. So, in all, the applicant is entitled for total compensation of Rs.4,09,734/- under the various heads.

Liability :-

12. 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 rash and negligent driving on the part of the opponent No.1 - driver of said offending Pick-up Tempo No. GJ31-T-2363. So far as the liability to pay the compensation to the applicant is concerned, it is appears from driving license produced at Exh.52 that opponent No.1 possessed valid license on the date of accident and opponent No. 1 Arvindbhai Parsingbhai Vasava is also owner of such vehicle as per copy of R. C. Book Exh.35. Further, it is appears from copy of Insurance Company Exh.36 that offending vehicle was insured with the opponent-insurer and the policy covers on the date of accident.

The ld advocate for Insurance Company has filed written arguments vide Exh. 55 in which he has argued that the tempo which was driven by the opponent No. 1 do not have permit at the time of accident and for that the Insurance Company has

filed RTO application for the production of the permit and the same has been durly served and the RTO came before the Hon'ble Court and has produced the Certificate of RTO that the Tempo do not have valid permit at the time of accident and the same has been submitted on record vide Exh. 46.

Affidavit of legal officer of opponent No. 2 is produced vide Exh. 50. In cross-examination, this witness has stated that I have read the RC Book of Pick-up Tempo No. GJ31-T-2363. It is true that I have not issue notice or take statement of opponent No. 1 regarding not having driving licence with him. It is true that I have not get any certificate from RTO office regarding driving licence. It is true that On-line abstract print is not certified document. That it is Goods caring vehicle Package Policy. It is true that I have produced policy and terms and conditions of Pick-up Tempo No. GJ31-T-2363. It is not true that I am giving false deposition to not to pay compensation by Insurance Company.

Ld advocate for opponent No. 2 Insurance Company has relied upon Civil Appeal No. 5826 of 2011 decided by Hon'ble Supreme Court of India in the case between Mukund Dewangan v/s Oriental Insu. Company Ltd.

The citation produced by ld advocate for Insurance Company for the breach of condition of policy for not having transport vehicle driving licence but in the present case the opponent No. 1 has driving Licence which is produced at Exh. 52. Therefore, the case-law produced by the ld advocate is not applicable to the present case on hand.

Mr. Sachinkumar Babubhai Panchal, RTO Officer, Rajpipla has deposed vide Exh. 45 on behalf of opponent No. 2 Insu. Company in which in examination-in-chief, he has stated that No permit is issued by RTO Office for Pick-up Tempo No. GJ31-T-2363. A certificate in this regard is issued which is produced vide Exh. 46.

This witness is cross-examined by ld advocate for petitioner, in which the witness has stated that it is not true that while checking the online software, no other vehicle of this type was found. It cannot be said whether the permit has been obtained from the RTO Office.

Therefore, looking to the deposition of RTO Officer, Rajpipla at Exh. 45 and and Certificate Exh. 46, this Tribunal is of the view that the offending Pick-up Tempo No. GJ31-T-2363 was not having permit at the time of accident which is breach of condition of Insurance policy.

This Tribunal has gone through the principle laid down in the judgment of Hon'ble Supreme Court in the case between K. Nagendra vs The New India Insurance Co. Ltd decided on 29 October, 2025 by Hon'ble SUPREME COURT OF INDIA in CIVIL APPEAL OF 2025 (Arising out of SLP (C) Nos. 7139-7140 of 2023)

Looking to the principles held by Hon'ble Supreme Court in above-mentioned case-laws and facts and circumstances of the present case on hand, the principle held by Hon'ble Supreme Court would be applicable to the present case on hand, hence the insurer (opponent No. 2) shall pay the amount awarded by this Tribunal to the petitioner in the first instance, with liberty to recover the same from the driver cum owner of the vehicle (opponent No. 1) in accordance with law.

Therefore, considering the above discussion, this Tribunal comes to the conclusion that the opponent No. 1 is liable to pay the compensation to the petitioner, however the opponent No.2 Insurance Company is required to first pay the awarded sum to the petitioner and then Insurance Company is entitled to recover the paid awarded sum along with interest from the driver cum owner of the offending vehicle in

execution proceedings. Hence, I decide the issue No. 1 and 2 accordingly.

13. 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.

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

1. Present claim petition is hereby partly allowed against opponent No. 1.

2. The applicant is entitled to get **Rs.4,09,734/- [Rupees Four Lacs Nine Thousand Seven Hundred and Thirty Four Only]** towards the compensation from the opponent No. 1, with proportionate costs and 9% p.a. interest from the date of filing of the claim petition till realization. However, the opponent No.2 Insurance Company is required to first pay the awarded sum to the petitioner and then Insurance Company is entitled to recover the paid awarded sum along with interest

from the opponent No. 1 in execution proceedings. The opponent No. 1 is 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.

Place : Rajpipla

(Atulkumar Vinodbhai Hirpara)
M. A. C. T. (Auxi.) &
Additional District Judge,
Narmada, At - Rajpipla
GJ00656