

GJNV010003492020			Presented on : 28.02.2020
			Registered on : 28.02.2020
			Decided on : 24.04.2026
			Duration : Y M D
			06 01 27

Exhibit :	77
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Before the Motor Accident Claim Tribunal (Main), Navsari.

Motor Accident Claim Petition No.16/2020

PETITIONER:-

Pravinbhai Kalabhai Khetariya,

Age : 48 yrs., Occ. Diamond Polishing Work,

Resi. At Khodiyar Niwas, Behind Gaurishankar Mahollo,
Jalalpore Road, Navsari.

VERSUS

OPPONENTS:-

- Nilesh Chimanlal Gandhi,**
Age : Adult, Occupation : Business,
Residing at : 601, Avenue Park Apartment,
Citylight Road, Surat.
(Owner of Maruti Swift Car No. GJ.05.CJ.8090)
- Anish Usmanbhai Multani,**
Age : Adult, Occupation : Service,
Residing at : Khwaja Manjil, Rustampura, Surat.
- HDFC ERGO General Insurance Co. Ltd.,**
Address : 6th Floor, Leela Business Park,
Andheri, Mumbai.

Appearance:

Mr. K.D.Sukhadia, Learned Advocate for the Petitioner.
Mr. M.N.Parmar, Learned Advocate for the Opponent No.1 & 2
Mr. A.A.Rana, Learned Advocate for the Opponent No. 3

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

1. Present claim petition is preferred under Section-166 of the Motor Vehicle Act, 1988, for getting compensation of **Rs. 1,35,000/-**.

2. The factual matrix leading to the present proceeding are as under:

That on 31.12.2012 at 08:00 p.m., the petitioner was going as a pedestrian, when they reached near place of accident, at that time, driver of Maruti Swift Car No. GJ.05.CJ.8090 came by driving the car in rashly, negligently, endangering human life and in full speed and had dashed from behind with the petitioner and accident had occurred. In the said accident, the petitioner sustained serious injuries on right leg as well as minor and major injuries all over his body. In this regard, complaint was also registered against the driver of the car before the Jalalpore Police Station vide C.R. No. 03/2013.

3. At the time of accident, the petitioner was aged 48 years, having robust body and no vices and no disability and was doing diamond polishing work and earning Rs. 12,000/- to Rs. 15,000/- per month. Because of the injuries, expenditure and disablement arising out of the vehicular accident, this petition is filed by the petitioner for compensation of Rs. 1,35,000/- with the interest @ 15% p.a., against the opponents.

4. The opponents are duly served. Learned Advocate for the opponent no.1 & 2 have appeared and filed written statement vide Exh. 29 denying the involvement of alleged vehicle in the accident, age, income of the petitioner and all the averments of the petition and has contended that, if the tribunal comes to the con-

clusion that, the accident occurred due to negligency of opponent no. 2 then, at the time of accident, the involved vehicle was insured with the opponent no. 3 and opponent no. 3 is liable to pay compensation to the petitioner and further contended that, the charge-sheet has not been filed till today against the opponent no. 2 and further contended that there was no negligence on part of opponent No.2 for occurrence of the accident and by raising such contention has urged to reject the claim against them.

Learned advocate for the opponent no. 3 has filed written statement vide Exh. 31, wherein, they have denied negligence, involvement of alleged vehicle in the accident, age, income of the petitioner and all the averments of the petition and have further contended that, the accident occurred due to sole negligency of injured-petitioner and there was no negligence on the part of the opponent no. 2 and further stated that on the day of accident, in the night, the injured-petitioner had not taken care of traffic on the road and had fell down on the road and accident had occurred and by raising such contentions have urged to reject claim against them.

5. The petitioner has produced the following oral as well as documentary evidence:

ORAL EVIDENCE

Sr.No.	Particulars	Exh.No.
1.	Affidavit cum-examination-in-chief of petitioner-Pravinbhai Kalabhai Khetariya	35

DOCUMENTARY EVIDENCE

Sr.No.	Particulars	Exh.No.
1.	Copy of complaint	37
2.	Copy of panchnama of place of incident	38
3.	Copy of driving license of opponent no. 1	39

4.	Copy of R.C.Book of Car	40
5.	Copy of insurance policy of car	41
6.	Copies of discharge card, medical bills of injured-petitioner	42
7.	Original medical bills, receipts etc.	43 to 69

6. The petitioner has submitted his closing pursis vide Exh.70 and the Opponent No. 1 & 2 have submitted their closing pursis vide Exh. 74 and Opponent No. 3 have submitted their closing pursis vide Exh. 76.

7. Heard the learned advocate for the petitioner as well as opponent no.3. The learned advocate for the opponent no. 1 & 2 has not remained present for arguments hence right to argue the claim petition has been closed by the tribunal. Read the R. & P., and took into consideration the evidences produced on record.

8. The following issues are framed vide Exh. 23.

ISSUES

1.	Whether the claimant proves that he/she had sustained injuries because of rash and negligent driving on the part of the driver of the vehicle involved in the accident ?
2.	Whether the claimant/s is/are entitled to get compensation ? If yes, then what amount and from whom ?
3.	What order and award?

9. My findings on the above issues are as under and the reasons for the same are discussed hereinafter.

FINDINGS

1. **In the Affirmative.**
2. **In the Affirmative, as per final order.**
3. **As per final order.**

REASONS

ISSUE No.1.

10. While deciding the point of negligence, it has to be borne 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.*

11. The issue No.1 is pertaining to negligence on the part of driver of offending vehicle involved in the incident. Negligence means failure to exercise required degree of care expected of a prudent driver. It is a settled principle of law that the burden to prove negligence on the part of driver of offending vehicle is on the petitioner who asserts it. The petitioner has to produce reasonable evidence to show that the accident took place due to negligence on the part of driver of the vehicle involved in the accident. Therefore, burden shifts upon the other side to explain the circumstances under which the accident occurred. In the claim petition for the accident under the Motor Vehicle Act strict proof of negligence is not necessary. Negligence can be established even on the basis of preponderance of probabilities. It is true that sometimes direct evidence to prove the negligence is not available and therefore, principle of *res ipsa loquiter* i.e. things speak for themselves is required to be kept in mind at the time of deciding negligence. This settled principle of law has been frequently and exhaustively discussed in various judgments of Hon'ble Superior Courts as well as our Hon'ble High Court, as for instance Hon'ble

Apex Court in the case of *Gujarat State Road Transport Corporation v/s Kamlaben Valjibhai Vora reported in 2001(3) GLR 2528*.

12. In order to prove this claim, the deposition of the petitioner no. 1 is recorded vide Exhibit-35. On perusal of exhibit-35 which is the affidavit as per the provisions of Order-18, Rule-4 of the C.P.C. in lieu of examination-in-chief, there is narration of happening of incident as stated in Exh.1, it has been averred that on 31.12.2012 at 08:00 p.m., the petitioner was going as a pedestrian, when they reached near place of accident, at that time, driver of Maruti Swift Car No. GJ.05.CJ.8090 came by driving the car in rashly, negligently, endangering human life and in full speed and had dashed from behind with the petitioner and accident had occurred. In the said accident, the petitioner sustained serious injuries on right leg as well as minor and major injuries all over his body. In this regard, complaint was also registered against the driver of the car before the Jalalpore Police Station vide C.R. No. 03/2013. The accident had occurred due to sole negligency of the driver of the car.

13. Having considered the arguments put forward, it is an undisputed fact that the petitioner sustained injuries in the said vehicular accident. The petitioner has hinted towards sole negligence of the driver of the car bearing registration No. GJ.05.CJ.8090. As regards the negligency is concerned, the documentary evidences are required to be considered. On perusal of the copy of the complaint vide Exh. 37, the manner of the happening of the accident has been stated and the registration number of the offending Maruti Swift Car has also been stated and it has been stated that the petitioner had suffered injuries and the petitioner himself had seen the registration number of the said maruti

car and it has been mentioned in the complaint itself and it has been clearly mentioned that the petitioner was going as a pedestrian and the car had dashed from behind and he had suffered injuries. On perusal of the panchnama vide Exh. 38, there is description of place of accident. As regards negligency is concerned, petitioner has hinted towards the sole negligency of the opponent no. 2 and the said documentary evidences are supporting the said say. No doubt, no charge-sheet has been produced on record but the copy of the complaint is sufficient to come to the conclusion regarding the accident having been occurred. Except the bare words by the opponents there is no evidence to show that the said car was not involved in the accident or that no accident had occurred by the opponent no. 2. It is also required to be noted that, the petitioner was going as a pedestrian and at the night time, the driver of the car was duty bound to drive the car cautiously, by following the traffic rules but he has failed to do so and due to his negligence, the accident had occurred and the petitioner had suffered injuries and permanent disablement. The opponents have raised the contention that due to the fault of the petitioner, the accident had occurred but this is not supported by any kind of evidence and the bare words would not suffice the proof which is required. Hence, considering the manner in which the accident had occurred, there appears to be sole negligency of the driver of the car no. GJ.05.CJ.8090 and there was no negligency on the part of the injured-petitioner. So, the cumulative analysis of the afore stated evidences in the lime light of the oral & documentary evidence clearly establish that the driver of the car was driving rashly and negligently and in excessive speed and due to his such type of driving, the accident had occurred and so, it is clearly es-

tablished that the driver of the car bearing registration no. GJ.05.CJ.8090 is solely negligent for happening of the accident and there was no negligence of the injured petitioner.

Moreover, the driver of offending vehicle has not stepped into witness box to explain the circumstances in which the accident occurred or that there was no negligence on his part. As driver of the car did not enter the witness box adverse inference is required to be drawn against him. Therefore, it can safely be presumed that whatever allegations and averments made by the petitioners against the driver of car are indirectly accepted by the opponents. As per the following judgments, non-examination of driver of offending vehicle will lead the Tribunal to believe that the driver was rash and negligent in driving. *(1) 1981 ACJ 460 [Ramsumer Habai Yadav v/s State of Maharashtra](2) 1981 ACJ 428 [Dinanath & Ors. v/s Tarachand and Sons & Ors.]*

So, on the basis of the discussion made above and considering the manner in which the accident had occurred, the circumstances speak for themselves and therefore, the principle of *res ipsa loquiter* is equally applicable in the present case.

So, taking into consideration the documentary evidences as well as oral evidence and the fact that no genuine dispute has been taken by the opponents regarding the negligence and the manner of happening of the accident and also considering the manner in which the accident had occurred, this tribunal comes to the conclusion that there was sole negligency of the driver of the car i.e. opponent no. 2 for happening of the accident and therefore, I answer the **issue No.1, accordingly in the “affirmative”**.

Issue No.2:-

14. Normally in a case of injury arising out of vehicular accident, compensation is broadly divided into seven major heads as under:-

1.	Pain, shock and suffering.
2.	Future Loss of income if there is permanent disability
3.	Actual Loss of Income
4.	Cost of Treatment and Medicines.
5.	Attendant Charges.
6.	Transportation Charges.
7.	Charges for special diet.

15. Let us now decide what amount of compensation can be awarded to the petitioner on the above stated heads?

PAIN, SHOCK AND SUFFERING:

16. As per the affidavit at Ext.35, the petitioner sustained injuries and the said say is supported by the document injury certificate produced on record vide Exh. 42 which is the discharge card of petitioner which shows that the petitioner had suffered injuries and hence, I am of the opinion that the petitioner should be awarded **Rs. 10,000/-** as compensation under the head of pain, shock and suffering.

FUTURE LOSS OF INCOME:

17. The petitioner has stated in the affidavit that he was earning monthly Rs. 12,000/- to Rs. 15,000/- by doing diamond polishing work but no documentary evidence is produced by the petitioner to prove the same. If the petitioner was doing the diamond polishing work then definitely there should be some documentary evidence to this effect regarding his attendance, salary paid and at

which place he was serving and who was the owner of the said unit but not a single averment is made in this regard and hence the say of the petitioner regarding the diamond polishing work and income as stated is not believable and petitioner has admitted the same in his cross-examination and hence, there is no evidence of income produced on record and so this Tribunal is left with no alternative than to consider the income of the deceased on notional basis.

It is cardinal principle of law that Tribunal cannot expect from poor persons or small business persons or from persons doing small job in private sector to maintain his/her books of account with respect to his monthly income and expenditure. In the case of *Govind Yadav v/s National Insurance Com. Ltd., reported in 2012 (1) TAC 1 (SC) = 2012 ACJ 28 (SC)* it has been held in para No.17 that when there is no proof of income, income of the deceased or injured petitioner shall be decided by taking into consideration prevalence minimum wages. The petitioner has not produced on record the prevalence minimum wages applicable for the year 2012, therefore, this Tribunal is not in a position to assess the monthly income of petitioner on the basis of the prevalence minimum wages. However, considering the fact that accident occurred in the year 2012 and the kind of work performed by the petitioner along with the age, in my opinion, income of petitioner at **Rs. 5,000/- p.m.** can be assessed for computing actual loss and future loss of income.

So far as age is concerned, the petitioner has stated that he was aged 48 years at the time of accident and but the petitioner has not produced any proof of age but himself has stated the age and so, the age of the petitioner is believed to be 48 years at the

time of accident and hence, the tribunal believes the age of the petitioner as **48 years**.

So far as injury/disability of petitioner is concerned, only discharge card is produced vide Exh. 42 and no disability certificate is produced by the said petitioner. Further, the petitioner has not stated that what kind of disability he is facing due to the accidental injury and what is the disability body as a whole to the petitioner. It is also required to be noted that the petitioner has not produced any evidence to show that what is the disability occurred to him due to the accidental injuries and if there is any disability, what is the effect of the same on his social status, style of living, future prospect etc. and considering the documentary evidence on record, it is clear that the petitioner is having injury but no disability certificate has been produced nor any doctor has been examined to bring on record any disability to the petitioner due to the accidental injuries and so, this tribunal is not in position to assess the disability to the petitioner due to the accidental injuries and the petitioner has also not produced any kind of evidence to bring forward the disability suffered by him due to the accidental injuries. But, it is the fact that the petitioner has suffered injuries and so, he must be facing some difficulties in his day to day activities and hence, if a lump-sum amount of **Rs. 20,000/-** is granted under the afore stated head, it would serve the ends of justice.

ACTUAL LOSS OF INCOME :-

18. According to the petitioner, as per the affidavit, the petitioner sustained fracture as well as injuries on various parts of the body and had taken treatment in the hospital and was also admit-

ted and operated. On perusal of discharge card at Exh. 42, it is fact that the petitioner sustained fracture and had taken treatment in hospital and operated there. Further, the injuries have resulted into permanent partial disablement and the petitioner had suffered injuries on various parts of the body and so, considering the same, in my view, the petitioner must have remained out of work at least for a period of one month. Hence, it would be just and proper to award **Rs. 5,000/-** towards actual loss of income.

COST OF TREATMENT AND MEDICINES:-

19. The petitioner has produced medical bills, receipts etc. vide Exh. 43 to 67. As per medical papers he has taken treatment at private hospitals and the total expenses for the treatment is Rs. 35,252/-. Therefore, it is just and proper to award amount of **Rs. 35,252/-** under this head.

TRANSPORTATION, ATTENDANT, SPECIAL DIET:

20. According to the petitioner, as per his affidavit, he sustained injuries and was admitted in hospital. The petitioner had suffered serious injuries and so looking to the age, kind of injuries and the petitioner being bedridden, so, attendant must have been required during the treatment and the petitioner must have also been required to incur expenses for transportation and must have also taken special diet for speedy recovery. Therefore, this Tribunal feels it fit that if the amount of **Rs. 10,000/-** is awarded under the head of attendant charges, special diet and transportation charges to the petitioner it will meet the ends of justice.

Thus, the petitioner is entitled for compensation as stated below:-

Sr.No.	Particulars.	Amount in Rs.
1.	Loss of Future Income.	20,000/-
2.	Pain, shock and suffering	10,000/-
3.	Cost of treatment and medicines	35,252/-
4.	Actual Loss of Income	10,000/-
5.	Transport, Attendant, special diet.	10,000/-
	TOTAL	<u>85,252/-</u>
	(Rounded off)	85,260/-

21. While deciding the issue No.1, this Tribunal has held that the opponent no. 2 - driver of the car bearing registration no. GJ.05.CJ.8090 was solely negligent for happening of the said accident and the said car was under the ownership of Nilesh Chimanlal Gandhi i.e. opponent no. 1, which is evident from the copy of R.C.Book of the vehicle produced on record vide Exh. 40, perusing which it appears that the name of the said owner is appearing in the column of ownership and no dispute has been raised by him regarding he not being the owner of the swift car. On perusing the insurance policy produced vide Exh. 41, it appears that said car was insured by opponent no. 3 and the period of validity is from 17.07.2012 to 16.07.2013, whereas said accident took place on 31.12.2012, therefore said insurance policy was in force and was active at the time of accident. Therefore, all the opponents are jointly & severally liable to pay compensation to the petitioner and therefore, I answer the Issue no.2 accordingly.

INTEREST

The petitioner has prayed for interest at the rate of 15% per annum. As regards the said contention is concerned, considering the judgment of the Hon'ble Constitutional Bench of the Hon'ble Apex Court in the case of *Pranay Sethi (Supra)*, the Hon'ble Apex

court has allowed interest at the rate of 9% per annum. Hence, I hold that the petitioner is entitled for interest at the rate of **9% per annum** from the date of the petition till the realization of the amount and I pass the following final order:

ORDER

The petition is hereby **partly allowed** with proportionate costs and interest against the opponents.

The petitioner do recover **Rs. 85,260/- (Rupees Eighty Five Thousand Two Hundred Sixty)** from the **opponents** together with interest at the rate of **9% p.a.** from the date of petition till realization of the amount along with proportionate costs of the petition.

The opponents are hereby directed to comply with the provisions of Section 194-A of the Income Tax Act and deposit the afore stated amount of award after deducting the amount of interim compensation, if any paid u/s 140 of M. V. Act directly by RTGS or NEFT to the following bank account of this tribunal **within 30 days** from the date of this order;

Account Name :-	Motor Accident Claims Tribunal, Navsari.
Bank Name :-	State Bank of India
Account Number :-	40756379884
IFSC :-	SBIN0000439
MICR :-	396002061
Account Name :-	Motor Accident Claims Tribunal, Navsari.

The opponent shall instruct his bank to remit the payment with the following information.

MACP No.	
Claims Tribunal Name, Place	
Date of Award	
Compensation Amount	
Income Tax Deducted at Source	
Bank Transaction Reference No. / Unique Transaction Reference (UTR) No.	
Name of Bank	
Name of Insurance Co.	

On such deposit being made, the opponents shall submit a letter to the office of the Claims Tribunal, Navsari enclosing a copy of the bank advice in the prescribed format as above.

The opponents shall make such deposit, shall also send a copy of the aforesaid payment advice to the Claims Tribunal concerned and serve the copy of the said on the petitioner or her/his advocate as the case may be.

In so far as tax deduction at source is concerned, Form 16-A of the IT Act should be provided to the petitioner on whose behalf the deduction has been made so as to enable him to seek refund of the tax deducted if any.

Deficit Court Fees Stamp, if any, be recovered from the awarded amount.

The entire amount be paid to the petitioner by account payee cheque after due verification.

Opponents bear their own cost and to pay the cost to the petitioner.

The copy of this Judgment and the award to be drawn shall be uploaded on the site and it be also sent to the concerned insurance company on their registered E-mail address available with this tribunal.

Award be drawn accordingly.

Signed and pronounced in the open Tribunal today on 24th day of April, 2026 at Navsari.

Sd/-

Date : 24.04.2026 [**Pratik Jaysukhbhai Tamakuwala**]
Place: Navsari. Chairman, M.A.C.Tribunal (Main),
Navsari.

UID. No.GJ 00581

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